

Admissibility of Handwriting Expertise

A Survey of Post-*Daubert* Cases

Formerly: Appendix B
"Texas *du Pont*/*Daubert*..."
Fourth Edition, Revised and Enlarged
through 2016

By Marcel B. Matley

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A & M Matley, San Francisco, CA
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DEDICATION

This fourth edition is given a special dedication. In September 2015 my older brother Bennie died, and we attended the military burial service with Catholic rituals at Willamette National Cemetery in Portland, OR. Bennie had been a fighter pilot in the United States Navy. I dedicate this edition to him, who was a better brother to me than I was to him.

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INTRODUCTION

This text is intended for both attorneys and document examiners. It surveys post-*Daubert* cases on admissibility of expert handwriting evidence. Because *Daubert* came down in 1993, I chose cases from that year and later. *Daubert v Merrell Dow Pharmaceuticals, Inc.*, *Schuller v Merrell Dow Pharmaceuticals, Inc.*, 727 Fed.Sup. 570 (S. D. Cal. 1989); affirmed, 951 F.2d 1128 (9 Cir 1991); vacated and remanded, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993); affirmed, 43 Fed.3d 1311 (9 Cir 1995); cert. denied, -- US --, 116 S.Ct. 189, 133 L.Ed.2d 126 (1995). Occasionally earlier cases are discussed because of especially pertinent issues they consider.

Cases from states on the *Frye* standard, *Frye v United States*, 54 App. DC 46, 293 Fed. 1013, 34 A.L.R. 145 (1923), are also included because they might have elements which can cross-apply to the *Daubert* standard. Selected cases on stylistics or linguistics and fingerprint identification are included when they mention or are cited relative to handwriting expertise. Ink experts are included occasionally since their alleged findings can trump any handwriting evidence however evident the latter might be. The case descriptions are as objective as I can make them; commentaries are my evaluations of the cases relative to both legal and technical reliability, as well as to draw salutary lessons from the cases. For the fourth edition I have endeavored to emphasize practical lessons and to offer sound technical information to experts and attorneys.

For the most part, issues other than handwriting expertise are ignored however important they are legally or technically. To summarize: Case synopses aim for accuracy and objectivity as in the ideal of journalism, while commentaries are my editorial evaluations and opinions. Before relying on any particular citation in your case work, check the original text of the case report for yourself.

Many case reports are officially designated “not for publication,” and rules of court forbid or restrict their citation as precedents. If for a particular case a citation to a standard reporter, such as *Federal Reporter* or *Pacific Reporter*, is not given, the case most probably comes under such a restriction. However, the reader must take responsibility to ascertain the authoritative nature of any case cited in support of a legal position. I only intend to supply as thorough a survey of available and relevant cases as I can, given my limited time and resources. Decisions may also have been overruled or modified by the same or higher court, and the user is responsible for verifying whether this is so or not.

Cases that are not officially published, and thus not to be cited as legal precedents, are included. I consider them as documentation of historical facts. As any other documentation of historical fact they serve to prove the reality they report, namely that forensic handwriting expertise is considered scientifically, technically and legally reliable, thus meriting admission in courts of law. This reality, though overwhelming and

unarguable, is still denied by those who regard their own stunningly awesome opinions far above mere reality.

An example of the rules regarding unpublished case reports is the following which is discussed among cases for Michigan Courts of Appeal:

People of the State of Michigan, Plaintiff-Appellee, v Andre Lamont Franklin, Defendant-Appellant. No. 300371. January 19, 2012. Court of Appeals of Michigan.
Before: JANSEN, P.J., and WILDER and K. F. KELLY, JJ.
UNPUBLISHED
PER CURIAM.

There are a great number of cases post-*Daubert* wherein expert handwriting evidence was received, but the case report gives no specific mention of a challenge to, or a ruling on, reliability. I have included such cases because I consider them supportive of reliability for two reasons. One, the trial court by law must make some determination of reliability before admitting the proffered expert testimony, and the inference I make is that there was such a judicial finding. Two, I infer from the very routine nature in which the expert evidence is reported that such is indicative that all parties at trial and/or upon appeal considered the expert evidence technically and legally reliable, and that the trial and appeal courts did so as well, unless there is statement to the contrary. I suggest that one can reasonably consider these cases of routine admissibility as supportive of the general finding by courts of law that expert handwriting evidence is in itself reliable.

My earliest research was at public schools of law which subsequently restricted or eliminated access by the public. Later research had been done on www.LexisOne.com which saved much time and expense. LexisNexis reproduced case reports not in standard format but in its own format. The content was treated by me as if it were faithful to the original. If one is to use the case for legal citation and quotation, rules may require an official reporter be cited and its official format used for copies submitted to a court of law. One must check rules of court that apply to the jurisdiction one is working in.

In early 2012, LexisOne stopped providing free access to court case reports. I subsequently turned to legal search services of Google Advanced Scholar: www.scholar.google.com/advanced_scholar_search. I found it to be more congenial for me than other Internet sources.

At times the association of an expert witness is indicated, either employment or membership in an organization. Please bear in mind that these refer to any period of time during the expert's career, since often it is very difficult or impossible to verify current memberships and employment or the same at a specific point in time. I wish I had access to dependable information regarding such association so that all may be given the acknowledgment due them. The most complete information is for my own organization, National Association of Document Examiners [NADE], because of personal knowledge and ease of access to publicly available records maintained by NADE on its web site

(<http://www.documentexaminers.org/>). I sincerely wish I could do the same justice to all organizations and experts, and the reader's feed-back would surely assist me in satisfying this desirable and just recognition.

The cases are arranged according to the outline in the Table of Contents. Within each segment of the outline, cases are arranged by year and alphabetically by plaintiff within the year, using last names for individuals or an appropriate key word for others. Thus for the *Estate of Acuff* the key word is decedent's last name, "Acuff." The year used is the year of the last decision regarding an issue in handwriting expertise as best as I could determine. Otherwise, the date of a decision that merely lets previous decisions stand is ignored, such as "*certiorari* denied," or that addresses other issues. If you find any mistake in spelling or citation, or any other type of mistake, please be so kind as to inform me so that future editions can make the correction. Likewise, if you know of a case that could be included but is not, please supply the citation and all necessary information on accessing the case.

Here are names and initialisms of some organizations mentioned herein:

AAFS: American Academy of Forensic Sciences

ABFDE: American Board of Forensic Document Examiners

ABFE: American Board of Forensic Examiners

AFDE: Association of Forensic Document Examiners

ASFDE: American Society of Forensic Document Examiners

ASQDE: American Society of Questioned Document Examiners

BFDE: Board of Forensic Document Examiners

IAQDE: Independent Association of Questioned Document Examiners

NADE: National Association of Document Examiners

SAFE: Scientific Association of Forensic Examiners.

SWAFDE: Southwestern Association of Forensic Document Examiners

SWGDOC: Scientific Working Group for Questioned Document Examination

WADE: World Association of Document Examiners

IAQDE and WADE are both defunct. My understanding is that ASFDE and ASQDE are one and the same organization.

I am a member of NADE, which is why I could identify its members more completely. No slight is intended to any other organization. If in the future I have the time to do it, new editions will give the recognition due them all for the many fine handwriting experts who belong to them. Courts of law have made derogatory remarks of very few handwriting experts mentioned herein, very few indeed. I know that most of the latter, and I suspect that all of them, are those who do not belong to any of the organizations listed above or, if they do, fail to participate actively. The one exception I would personally make is American Board of Forensic Examiners, ABFE, one of a dozen or more names the organization sports. I belonged in its year of founding and quit after its first 1993 conference due to serious ethical concerns I had. Subsequently, I received from them several invitations to enjoy certification in some

forensic field I had neither interest nor qualification in solely for the bother of sending in a form and a check. I keep all such offers on file in case anyone takes exception to this or similar remarks.

The 2006 edition of this text had 135 pages and 335 cases cited. 305 case citations were added for the second edition, and all text was reviewed for correction if needed. The next edition cited 1200 plus cases. This edition cites 1,549 cases. I am confident that with more time to research, the entire coverage would easily double in size. The vast majority of trial court cases are not reported, and some of those listed come from reports in the literature with no information as to how one can obtain a transcript or official report. The reader is invited to submit information on cases at the trial level, particularly those involving *in limine* challenges to either the document examiner or the critic of handwriting expertise.

I refer to such critics as “anti-expert experts” since they have no forensic expertise but they do possess some ethereal genius that lets them decide whether genuine forensic experts possess expertise. They do have a genius for persuading others that the law and other pertinent realities are not what they are. I have the unfortunate duty to consider these anti-expert experts quite often in this text. If you believe I am a bit too sarcastic in discussing their remarkable skills, some of my friends have voiced the same view. If, after viewing their testimonies summarized herein, you feel this sarcasm should be toned down, I would appreciate your comments. If you feel I restrained myself too much in this regard, I would appreciate your comments even more.

To repeat my self-protective assertion: The reader takes all responsibility for verifying any information given herein for accuracy and applicability before relying on it. However industrious and conscientious I was in gathering this information, and I was both to the best of my ability, I remain another human being and subject to human error.

A second self-protective assertion: In case names and case citations I often follow exactly the usage of the particular report I found. If I thought there seemed to be a standard that prevailed most often, I have edited the usage of the particular report I found. At times, I later unearthed the case in an official reporter and so edited my usage to fit that in the official reporter. All in all, be kindly in your assessment of my usage of case names and citations, while I reiterate my self-absolution from all responsibility and assert again the burden that you, good reader, have in verifying any and every thing in this work that you think might be of use to you. The Latin proverb, “Caveat emptor,” is hereby altered to say, “Caveat lector!” After all, you may have paid no cash to obtain this edition of this work, so I have to extort some price of you.

Related to the above is that this compilation was created over several years. My views altered along the way as well as my literary style, though the entire text was hardly edited to bring it to my current literary practice. If I seem to contradict myself in places, and I would be surprised if anyone could not find instances of such, be assured I shall change as I grow either more infallible with the experience and, hopefully, wisdom of having aged, or more faulted with deterioration from the same experience of having aged.

Blessed Henry Cardinal Newman wrote *Apologia pro Vita Sua*. If I were to write an *Apologia pro Scripta Sua*, I would begin with the roughness of the spelling and manner of citation used herein. I would give two excuses, neither of which excuses one from verifying such matters before submitting them to the reader. First, the sources used had even greater variation, often within the same source or even the same item. Second, as the text and I both grew older and went through different editions, I grew tired in physical stamina for, as well as in being devotedly interested in, checking some precious pedantries or treasured trivia. My librarian's conscience pesters me regarding the neglect, but my lack of passion regarding some kinds of tiny details triumphs. I have gathered these gems from their various sources and leave it to you, good reader, to perfect and polish them in accordance with your standards and usage.

If by now the reader suspects this introduction grew as much like Topsy as much as having been planned, the reader is perspicacious. After a final review of the entire text with some corrections and additions, I owe the reader explanation, if not apology, for further imposing on another's valuable time.

Some cases provided occasion to address issues in document examination that are often misunderstood, the misunderstanding serving to reject very reliable evidence at some times and accept very unreliable evidence at other times. I took the occasion every now and again to expand my editorial comments to address some of these matters.

To this I must add a slight correction. The phrase "case of routine admissibility" has been edited out many times, mostly because it distracts from an editorial comment. The inference I made still holds: The law requires a finding of reliability by the trial judge prior to expert testimony, and I assume the trial judge performed all required tasks unless there is indication otherwise.

And now, good reader, you may safely turn the page with assurance you will not encounter further introductory or self-protective remarks, even though they may be direly needed.

I. FEDERAL CASES.

A. FEDERAL TRIAL COURTS: U.S. DISTRICT COURTS.

1993

1. *Lavean v Cowels*, 835 F. Supp. 375 (US Dist. Ct. WD MI 1993)

Plaintiff claimed a signature on a deed was a forgery, but his document examiner, Leonard Speckin, testified that it was genuine. To support his claim of fraud, plaintiff presented Speckin's testimony that two signatures were impressed on the deed, meaning they had been written on another document while it was placed on top of the deed. However, that only proved at some unspecified time an unknown document was signed on top of the deed.

COMMENTARY: A case of routine admissibility with the added acceptance of expert identification of indented signatures. To provide reliable evidence, one would have to identify the original signature that made the impression. There will be other cases discussed herein that illustrate how such evidence resolved some key issue in a case.

2. *Scott Doe v Kohn, et al.*, (Fed Dist Ct Philadelphia 1993)

Defense expert Gus Lesnevich was barred from testifying that a tear in paper indicated erasure with overwriting for lack of any technical basis. In the same case he was barred from identifying the person making scratch-outs over a signature. He did not have exemplars of scratch-outs by the person, while the signature was a different thing from scratch-outs so the two could not be reliably compared for purposes of identification.

COMMENTARY: Mr. Lesnevich was certified by American Board of Forensic Document Examiners as one of the original grandfathered members. Plaintiff counsel employed two document examiners to advise on the technical underpinnings for the challenges to Lesnevich, one of whom, Robert J. Phillips, also served as trial expert. The anti-expert experts were incapable of having Mr. Lesnevich's entire testimony on one issue found unreliable in *Starzecpyzel*, while in *Scott Doe* his proffered testimony was found entirely unreliable on two issues.

3. *Greenberg Gallery, Inc., v Bauman*, 817 FS 167 (D.C. DC 1993); affirmed without opinion, 36 F.3d 127 (DC Cir 1994)

Headnote 1: "It can be judicially noted that handwriting, like fingerprints, is subject to established objective tests, expert opinions about which are admissible."

Plaintiff's expert looked at a purported Calder mobile for ten, then later for two, minutes, maybe other short period, and was positive of forgery. It was exact copy of mobile in archival photo, but Calder never made an exact copy, therefore it was a forgery,

and therefore original existed somewhere else in the world, and therefore this was a forgery. He never examined the signature. Defendant's expert examined the mobile for one and half hours. She examined the signature and said it was absolutely accurate. She also checked provenance, which began with plaintiff's expert back when it was first sold.

COMMENTARY: This case illustrates that the expertise of handwriting identification is used in other fields than forensics. Art experts routinely engage in signature verification when authenticating art works. This was a post-*Daubert* decision, and it illustrates that applying it and the Federal Rules did not involve the peculiar legal theory invented by the anti-expert experts.

Experts in art examination qualified as handwriting experts since the same skill is routinely employed in their work. The critics of handwriting expertise, claiming to be competent scholars and researchers of the pertinent literature, particularly law since they are mostly law professors, miserably fail in uncovering such documentation as this case report that conclusively proves one of their favored doctrines is entirely mistaken.

4. *U.S. v Edwards*, 816 F. Supp. 272, 1993 U.S. Dist. LEXIS 3091 (D DE 1993)

In conviction for "unauthorized use of access device, a credit card, to obtain travelers checks," the "testimony of government's handwriting expert was properly admitted." Georgia Carter had compared defendant's known exemplars to the fictitious signature and concluded he had written it. The Court cites *U.S. v McGlory*, 968 F2 309 (3 Cir), cert. den., - US -, 113 S.Ct. 627, 121 LEd2 559 (1992), that a qualified opinion goes to the weight of the expert handwriting evidence and could be tested by cross-examination. Defense counsel fully cross-examined Carter and "fully availed himself of the opportunity during closing argument to discredit her expert testimony for its alleged lack of certainty."

At page 277, proper jury instructions were given that the jury could reject any or all of the expert testimony.

COMMENTARY: One suspects that those, who insist expert handwriting evidence must, as a requirement of science and as a rule of law, be kept out of jury trials, know very well that they cannot, as in *Edwards*, prevail on the merits and on the facts. I cannot recall a case report that says Saks and his like prevailed with a jury, those wonderfully common-sense and reasonable twelve folks who are us. They, however, claim to have done so but minus specific case citations in any writings I have seen of theirs, other than cases discussed herein. For an example of the claim minus evidence for it, see Reni Gertner, "Criminal Defense Lawyers Mount New Attacks on Forensic Evidence," *Lawyers Weekly Archive*, Dec. 11, 2000.

5. *U.S. v El-Jassem*, 819 F. Supp. 166 (US Dist. Ct. ED NY 1993)

COMMENTARY: Testimony of retired FBI agent Fred Woodcock, a document examiner, was received.

1994

6. *Dumond, et al., v St. Joseph Hospital of Nashua*, 861 F.Supp. 174 (U.S. DC D. NH 1994)

Dumond sued, alleging he was fired because of his age. This long passage on handwriting expert evidence and its consequences shows there were other dimensions to the case:

“The quietus as far as the defendant was concerned was the incident involving his former wife, Linda Dumond. Linda also worked in the Laboratory.... During the week of January 23, 1989 Linda and the plaintiff took a winter vacation at Bretton Woods, New Hampshire. A seemingly innocuous chain of events then occurred which had drastic consequences as far as the plaintiff was concerned.

“[I]n February, 1989 Linda was evaluated by her two supervisors, Deborah Messier and Eileen Murphy. They recommended that Linda receive an annual salary increase of 8%. Plaintiff, though having received remonstrances from Linda, raised it from 8% to 9%.

“What followed was unfortunate. Robert Demers was the plaintiff's immediate supervisor. His name was on the evaluation form and his name was forged. The evidence of Joan McCann, a handwriting expert that there was a forgery was cogent and the court accepts the evidence elicited by her testimony. The plaintiff hired a handwriting expert at the not inconsequential expense of \$1,500.00, but he or she was not called to testify. Considering all the circumstances involved, the inference is more probable than otherwise that the plaintiff forged Demer's signature, but not evidence beyond a reasonable doubt. There was also strong evidence that Wendy Goulder's initials on the evaluation form were also forged. The handwriting expert was candid in stating that she could not testify as to who may have forged Goulder's initials.

“The issue involving the evaluation form was eventually called to the attention of Ferron. Ferron made the decision that the plaintiff should be terminated. The plaintiff brought his discharge before the grievance committee. The grievance committee upheld the actions of Ferron.”

The decision includes a humanistic statement by the judge:

“During the trial it became evident to the court that the testimony presented was not germane to an age discrimination case, but pertained to a discharge of an employee with twenty-two years of faithful and meritorious service. He had one grievous peccadillo on his record which resulted in his termination. A more humane, less captious supervisor in the court's opinion may have censured or reprimanded the plaintiff with a final warning that further malfeasance would result in plaintiff's termination of employment.

“Albeit, it is not the function of this court to censure or inform the defendant how to run its hospital. The plaintiff did not present a preponderance of the evidence whereby this court could make findings that the plaintiff was fired because of his age.

“Judgment for the defendant.”

COMMENTARY: “Quietus” in Latin means in a state of rest, repose or sleep, and, to the ultimate, death. Our word “quiet” comes from it. In this context it means to end Plaintiff’s case, or, in an American colloquialism, it “killed off” his chances.

7. *Leaks v U.S.*, 841 F.Supp. 536 (U.S. DC S.D. NY 1994)

At page 545: “Leaks next claims that his attorney’s failure to request the services of a handwriting expert to independently analyze the notes recovered at the scene of some of the robberies amounts to ineffective assistance of counsel. According to the government’s handwriting expert, these notes linked Leaks with the crime. Leaks argues that: ‘[i]f the defense had called its own handwriting expert, there is a possibility the defense experts [sic] conclusions would have differed from those of the government’s expert.’ Petitioner’s Br. at 41. This argument is nothing more than mere speculation. Counsel’s decision not to request the services of an expert cannot be considered objectively unreasonable when Leaks has only presented his vague hope that another expert might have reached a different result than the government expert.[8] Thus, relying on a cross-examination of the government’s handwriting expert was a reasonable tactical decision. *Eisen*, 974 F.2d at 265. More importantly, as this claim is purely speculative, Leaks has also failed to show that any ‘prejudice’ occurred as a result of his lawyer’s strategic decision not to retain another handwriting expert.”

COMMENTARY: Footnote 8 reads: “It is also possible that another handwriting expert would have concluded that the notes were indeed in Leaks’ handwriting, thereby further supporting the apparently irrefutable assertion that Leaks was the one who wrote the notes and committed the charged crimes.” Some defenses are two pointed swords whereby one runs oneself through in order to run the enemy through. Guess who dies first or even solely?

8. *U.S. v Cox*, 3:92-CR-162-G. (U.S. DC N.D., TX, 1994)

After a hearing on whether defendant should be permitted to file an out of time appeal, Magistrate Judge Jane J. Boyle began: “Well, let me begin by saying that I think that the testimony of the document examiner was, was very credible.” Cox’s attorney had submitted a letter that she claimed she had written previously and that was evidence she never promised to file an appeal. The document examiner’s testimony contradicted this claim. Cox was granted leave to appeal.

COMMENTARY: The examiner was Linda James, a Diplomate Member of NADE..

9. *U.S. v Smyth*, 863 FS 1137 (N.D. CA 1994)

COMMENTARY: It is fully titled: “In the Matter of the Requested Extradition of James Joseph Smyth.” British Government’s request regarding an alleged IRA member was denied on grounds of likely religious and political retaliation. The case is cited as considering expert handwriting evidence, but I could find no such reference in the report.

10. *Zambia National Commercial Bank Ltd. v Fidelity International Bank*, 855 Fed.Supp. 1377 (US Dist. Ct. S.D. N.Y. 1994)

Carl Schaffenberger, a handwriting expert, testified for defendant “that he required several hours to confirm 1385* that the signatures were forgeries.” Therefore, defendant bank acted reasonably in taking the forged for genuine. In the end FIB had to pay for one check, and Zambia National had to absorb the other.

COMMENTARY: Schaffenberger is a certified member of NADE.

1995

11. *Cronin, et al., v Town of Amesbury, et al.*, 895 F.Supp. 375 (U.S. DC D. MA 1995)

Cronin was police chief of Amesbury but was accused of handwriting on a pornographic letter. He denied it under oath, though at his hearing he denied his signature but said “I don’t know” when asked was the handwriting his. A document examiner testified that there was a high probability the handwriting was his. With that and testimony from four police officers, the hearing officer found he had written it and had committed perjury in denying it under oath. The Town terminated him as chief. It was all affirmed upon Cronin’s appeal.

COMMENTARY: The letter had been found by another officer in a petty cash box in Cronin’s desk while he was on vacation.

12. *U.S. v Gale*, 1995 U.S. Dist LEXIS 3394 (N.D. IL 1995)

IRS sought order for handwriting exemplars from two respondents who asserted the exemplars were for criminal purposes and not tax investigations and IRS already had exemplars from one of them. They also asserted that Brenda Acevedo, the handwriting expert, would not qualify to testify at court under *Daubert* standards. The Court ruled that “the government’s burden is a ‘slight’ one” to show need for the exemplars, while Respondents had “a significantly greater” burden to defeat the request. They had not met their burden while the Government had met its burden.

COMMENTARY: The *Daubert* argument was irrelevant to the issue of ordering exemplars, since the burden was slight and the handwriting expert qualified “to attest to the fact that the materials presently in the government’s possession are insufficient.” It is poor military tactics to fire an artillery barrage either before or after the time that it would effectively change fortunes in battle.

13. *U.S. v McVeigh*, 896 F. Supp. 1549 (W.D. OK 1995)

This deals solely with court order to comply with grand jury subpoena for handwriting exemplars. On advice of counsel, defendant refused to comply with subpoena and later with court order. Nine reasons for the refusal are given at page 1552, and each is replied to by the Court:

1) *Subpoena product of illegal electronic surveillance*. At page 1559: “The

witness/Defendant has failed to raise a substantial factual issues [sic] as to the existence of illegal electronic surveillance as the source of the subpoena and directive.” Besides, FBI affidavits said there was none.

2) *Breaches of grand jury secrecy*. At page 1560: “To date, the witness/Defendant has not made even a *prima facie* showing that grand jury secrecy violations have occurred.” [Emphasis in original.] Besides, the remedy sought is not the appropriate one if such violation had occurred.

3) *Exemplars sought for another matter*. See replies to similar arguments.

4) *Unreasonable search and seizure*. At page 1560: He claimed printed handwriting was what he regularly used, so cursive writing would be unreasonable search and seizure due to the mental effort it required. However, checks and other documents were produced on which he had used cursive writing. The constitutional protection does not hinge on a handwriting being constantly exposed to the public, but on whether the person has a legitimate expectation to privacy. So one hardly ever speaking in public still has no privacy expectation relative to the voice.

5) *Overly broad*. At page 1558: The exemplars are required to determine authorship of relevant documents, the forms to be used are similar to those routinely used, and the court examined the three exemplars requested.

6) *Improperly issued*. At page 1558: The composition of the grand jury was challenged, but a witness before a court or grand jury is not entitled to challenge its authority, and besides the proper procedure for constituting the jury was followed. “And finally, even absent a valid grand jury subpoena and directive, the Court has independent authority to order the handwriting exemplars under the All Writs Act.”

7) *Improper purpose of obtaining evidence for a criminal case* (rather than determine probable cause). At page 1557: Defendant has burden of proving that there is no reasonable possibility that the exemplars will produce relevant information. He did not. As to probable cause argument, the Government has no obligation to indict at point of probable cause rather than waiting for stronger evidence.

8) *Same writings will be used for trial “here” and in Michigan*. At pages 1557-8: “Such rank speculation or supposition is insufficient to overcome the presumption of regularity that attaches to the grand jury’s acts [citation omitted], or to raise a substantial factual issue as to the purpose for which the subpoena and directive were issued.”

9) *As drawn, the order makes Defendant a witness against himself*. At page 1561: “[B]ut the thought processes involved [in producing cursive writing versus printed] are not revealed, only the products thereof...” Pat Tull was defense expert supporting argument of mental exposure. At page 1562: “The exemplars are nontestimonial because they do not reflect any communication by the witness of his beliefs, knowledge of facts or assertions of fact.”

At page 1562, it intimates in a way that he won by losing: Civil contempt would be futile and criminal contempt too costly, besides he was already in jail and had no money to pay any fines. It was a trial issue that there was no basis in science for expert

handwriting opinions.

COMMENTARY: At trial expert handwriting opinions were barred, thus seemingly to nullify Congressional authority to establish statutes on a court's authority to order handwriting exemplars. It seems that Federal courts do not give thought to the Texas rule that the Legislature satisfied itself on the reliability of a technique when it made it admissible by statute. Surely Congress would have been satisfied that expert handwriting examination was reliable when the various laws supporting its introduction at trial were enacted.

14. *U.S. v Starzecpyzel*, 93 Cr 553 (LMM), 880 FS 1027 (S Dist NY 1995)

Apparently this is the first and most famous *in limine* hearing under *Daubert* on whether handwriting expert identification is scientifically reliable and admissible. Gus Lesnevech was handwriting expert for prosecution at trial, while Mary Wenderoth-Kelly, certification official of American Board of Forensic Document Examiners (ABFDE), testified for the Government in the *Daubert* hearing. Defense presented as experts Dr. George Edward Stelmach, kinesiologist, and Professor Michael J. Saks, law professor.

"The court might well have concluded that a forensic document examination constitutes precisely the sort of junk science that *Daubert* addressed." But it is acquired "over a period of years" and comes "under the 'technical, or other specialized knowledge' branch of Rule 702...." Court rejected the nine-scale opinion terminology as being too exact.

COMMENTS: Mr. Lesnevech was certified by ABFDE as was also Mary Wenderoth-Kelly, the Government's expert for the *in limine* hearing.

The transcript of the *Daubert* hearing is a circus of assumption, speculation, egoism, illogical thinking, ignorance of QDE literature, and heavens knows what else. The transcript of Lesnevech's trial testimony begs for impeachment on several points. But being outsiders to the discipline and without mastery in observing and evaluating handwriting, the defense experts, singly and in combination, were of no help in impeaching him. By contrast, a lone handwriting examiner in New Jersey had him disqualified twice in the same case from giving opinions which violated the technical methods in the field. See: Robert J. Phillips, "A case report. {Scott Doe, et al., v Kohn, Nast & Graff}" 17 *Journal of National Association of Document Examiners* 28-33 (Spring 1995).

As to the nine-point scale, when properly considered as a five-point scale it exactly parallels the court's own terms for certainty of legal opinions, which proponents should have pointed out. Other cases reviewed herein will confirm this.

To insert a historical footnote: "Kinesiology" is "the study of principles of mechanics and anatomy to human movement." A hundred years ago those who did that for industry and commerce were called "efficiency experts."

The following is from a very thorough critique of the *Starzecpyzel Case* I never issued publicly:

WHAT IS THE STRATEGIC OBJECTIVE OF THIS TRIAL/HEARING?

Ex. gr.: For defense in criminal case it is ending up with at least one definite, reasonable doubt that defendant did the criminal act charged. Never be deflected from pursuit of your strategic objective!

Application to the *Starzecpyzel* Case:

1. Judge's logic left much to be desired:

a) Under *Daubert*, handwriting identification would be junk science if it were a science.

b) But it is not a science.

c) Therefore, the judge ruled it a technical skill, etc.

d) On the contrary, "Junk science minus science" does not give remainder "technical skill."

e) Junk science minus science = junk.

2. To arrive at technical skill ruling, judge needed:

a) A party to raise legal issue of technical skill. Judge raised it.

b) Expert evidence to support the finding. Judge gave it.

c) Judge's ruling was on his own unstated motion and based on his own expert testimony.

d) Thus "the dogs of defense" lost, but later the judge threw them two bones: they could get their own handwriting expert and cross-examine Lesnevich regarding their challenges.

3. Defense experts failed, inexcusably so.

a) Prosecution's trial handwriting expert ought to have been directly impeached, but:

- they failed to investigate him; and

- failed to consult those who knew and applied correct handwriting identification.

b) All on defense failed to see that the theory of the two prosecution experts made handwriting identification impossible!

4. Attorneys on both sides failed.

a) Defense, because they could not see what their experts could not.

b) Government, because defense experts could not have passed their own theory of *Daubert* criteria for admissibility.

c) All attorneys and the judge had *Daubert* wrong per later *Kumho* decision.

d) No expert witness could say what science is, so no one was an expert in science.

5. At the bare minimum defense experts were obliged to know each essential element of every crime charged and how each essential element needed to be proved beyond a reasonable doubt. Thus they would know how each essential element could be disproved. If none could be disproved, then one needed to know how possibly to cast a decidedly reasonable doubt on at least one essential element.

1996

15. *Bohler-Uddeholm v Elwood Group*, (W.D. Penn. #910706, 1996; 247 F.3d 79, 94 (3d Cir. 2001))

Scientific Sleuthing Review, Spring 1996, page 1, reported that the testimony for plaintiff by Albert Lyter and Richard Brunelle was dismissed without cross-examination. Defense was seeking sanction against plaintiff's attorneys and experts.

COMMENTARY: Al Lyter also had his testimony suppressed in *Learning Curve Toys, L.P., v PlayWood Toys, Inc.* It seems that Richard Brunelle and he often offered opposing opinions in cases, much of it denouncing the reliability of the other's work. Both have been members of American Academy of Forensic Sciences.

The appeal does not mention either Lyter or Brunelle.

16. *Nielsen, et al., v Village of Lake in the Hills, et al.*, 948 F. Supp. 786 (US Dist. Ct. ND IL 1996)

"Niensens' final challenge to the existence of probable cause is an attack on the authenticity of Joseph's signature on his written statement to Wright (J. Callahan Aff. I ¶¶ 14, Ex.). They present the testimony of 'questioned document examiner' Darlene Hennessy ('Hennessy'), who concludes 'based on a reasonable degree of scientific certainty' that the signature on Joseph's May 5 statement to the Village Police Department was not written by the same person who signed Joseph's August 25, 1995 affidavit.[7] As defendants have pointed out, the reliability of Hennessy's conclusion is suspect in her own terms,[8] let alone under a *Daubert*-type analysis. Nonetheless it will be taken as true for purposes of the current motion."

There were other communications of the same import as Joseph's, so the claimed inauthenticity of Joseph's signature made no difference. All defendants were granted summary judgment.

COMMENTARY: The wording above suggests that there would have been a successful *in limine* challenge to the expert testimony if the matter had proceeded to trial on the merits.

17. *In re Pittman, Debtor; Pittman v Miller*, 197 B.R. 852 (U.S. DC S.D. IN 1996)

At pages 854-855:

"In this appeal, Pittman initially challenges the bankruptcy court's findings as unsupported by the evidence. In his view, the court's acceptance of 'the disjointed testimony of [Miller] over the concise cogent story told by Mr. Pittman' is clearly erroneous. (Appellant's Brief in Support, p. 25.)

"Yet this case was more than a simple contest of his-word-against-her's. Miller, for example, presented the testimony of a handwriting expert, who concluded that she did not sign the Satisfaction of Mortgage. Because this expert compared the signature on the document to original exemplars (rather than copies, as used by Pittman's expert), the

bankruptcy judge gave his testimony great weight. In addition, the notary who purportedly witnessed and subsequently notarized Miller's signature did not recall having ever seen either Miller or Pittman. Thus, there was evidence independent of Miller's testimony to support the bankruptcy judge's finding.

“Nor does the record indicate that the factfinder was obligated to give Pittman's testimony more weight than Miller's. Indeed, the bankruptcy judge found Pittman not to be a credible witness,[3] a finding that we do not lightly impugn.”

COMMENTARY: A thought that could be added to many cases discussed herein is that you might neutralized a charge against your expert vis-a-vis the opposing expert that yours did not use original documents while the other expert did. It might happen that maneuvering by the other side kept originals away from your expert, or, as in one case I testified in, the opposing expert claimed to have examined the original, but other evidence showed the original had been kept in storage in another state all along. As the *Kumho* case warns us, nothing is so solely because an expert says it is.

18. *U.S. v Goldberg*, 937 F. Supp. 1121 (US Dist. Court, MD PA 1996)

“At the re-trial, the government presented evidence in the form of the testimony of David W. Attenberger, Supervisory Special Agent for the Federal Bureau of Investigation. Attenberger is a document examiner who works in the FBI crime laboratory in Washington, D.C. It was Attenberger's opinion that Magistrate Judge Sorrentino's signature was copied from an original order in the civil case. In essence, the process would involve typing the fake order, placing a cut-out copy of the signature in the appropriate spot, and making another photocopy. 1125* Attenberger concluded that the two signatures, that on the fake order and that on an actual order from the civil file, were so closely alike that it was highly improbable that the false signature was written by hand on the fake order.

“To rebut this testimony, Goldberg presented the testimony of Duane Munera, an inmate who was incarcerated at USP-Lewisburg during the appropriate time. On the stand, Munera made a free-hand copy of the signature of Magistrate Judge Sorrentino which credibly reproduced the signature. In response to a suggestion by the prosecutor that he had practiced signing the name, Munera copied the signature of a court security officer.”

COMMENTARY: Munera's demonstration of his versatile skill had no bearing on the outcome. Charles Hardless, Jr., tells in *The Identification of Handwriting and the Detection of Forgery*, Calcutta India, 1912, of a case in which a young man was accused of forgery. Waiting for the prosecution expert to arrive, the young man confessed and proceeded to make excellent imitations of the judge's and attorneys' signatures. When the expert arrived, he was sworn in and asked to compare the young man's imitated signatures to the genuine signatures, without telling him what had happened before he arrived. He authenticated every imitation as genuine.

19. *U.S. v Pravato*, 95 CR 981 (E.D. NY 1996)

Motion to exclude handwriting expert testimony was denied. *Daubert* did not apply to the evidence, accepting the *Starzecpyzel* analysis in this regard. The jury would be assisted and could evaluate the evidence, while defense would “present its own expert who will testify to the vagaries of handwriting analysis,” and the Court would give a fitting instruction.

COMMENTARY: The ruling was standard judicial common sense which essentially made the parties litigate the issues of fact before a jury. The interpretation of *Daubert* was proved incorrect by the decision in *Kumho Tire Co., Ltd., et al. v Carmichael et al.*, 526 US —, 143 L.Ed.2d 238, 119 S.Ct. 1167 (1999), reversing *Carmichael v Samyang Tire, Inc.*, 131 Fed.3d 1433.

20. *Zanders and Harris v U.S.*, 678 A. 2d 556 (DC Ct. App. 1996)

Out of several convictions, ones on pickpocketing and robbery were reversed. At page 562: “The only defense witness to testify was Richard Stanko, a handwriting expert and a special agent employed by the FBI who was called by Harris. He compared handwriting samples from Zanders and Harris with the signatures on the hotel registration and the Visa credit card receipt slips. He reported that his results were ‘inconclusive’ concerning who signed the credit card receipt slips. Zanders posed no questions to Special Agent Stanko, and presented no witnesses.”

COMMENTARY: This case suggests attorneys must do what they are credited with forcing medical defendants to do, practice defensive lawyering. The inconclusive opinion by Stanko defeated the claim of ineffective assistance of counsel by Harris. But then the rule seems to be that all ineffective assistance is presumed to be very effective, almost to the point no matter how ineffective on its face.

1997

21. *U.S. v Evans*, M.D. FL Feb. 1997, though may be W.D. PA May 1997

COMMENTARY: In a 2006 AAFS presentation, Robert J. Muehlberger cited this as a handwriting *Daubert* case. I have not yet found a report for it.

22. *U.S. v Gilreath*, No. 1:96-CR-471 JTC (US DC N.D. GA 1997)

COMMENTARY: SWGDOC lists this as a case in which a federal magistrate court judge gave a favorable ruling for the unconditional admissibility of handwriting identification. I have not obtained a copy of the case report.

23. *U.S. v Humphery*, No. 94-CR-447-JEC (N.D. Ga. 1997)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. Another source said this was one of Professor Mark Denbeaux’s cases, but I have not been able to locate a text.

24. *U.S. v Martin*, No. 1:96-CR-287-JEC (N.D. Ga. Jan. 22, 1997)

Robert Muehlberger testified in *Daubert* hearing to 1200 experts testifying in questioned documents.

Footnote 305, 29 *Seton Hall Law Review*, page 484, says Meuhlberger credits Saudek more than Osborn and that the latter based his work on the former. In an AAFS 2006 presentation Robert J. Muehlberger said Kam and Denbeaux appeared in this case.

COMMENTARY: To my best recollection, everything Meuhlberger has written is well worth study.

25. *U.S. v McVeigh*, 96-CR-68, U.S. D.C., Colorado, Feb. 5, 1997; 83 *ABA Journal*, 76-78 (May 1997)

The *ABA Journal* article reported that the judge ruled similarities in handwriting could be testified to by an FBI expert but an identification of the writer might not be made. A transcript available on the Internet recorded testimony by McVeigh's sister, Jennifer, wherein she identified his handwriting on letters of hatred and vengeance.

COMMENTARY: Copy of the defendant's "Motions to exclude handwriting and hair and fiber identification evidence" with attached memoranda from *Starzecpyzel* can be downloaded from the Internet.

See above among 1995 District Court cases the discussion of the pre-trial court order for McVeigh to give handwriting exemplars.

1998

26. *S Industries, Inc., v Stone Age Equipment, Inc.*, 12 F.Supp.2d 796 (U.S. DC N.D. IL 1998)

At page 807: "Defendants employed a Board Certified Forensic Document Examiner, Diane Marsh, who conducted visual, microscopic, and close-up photographic examinations of the STEALTH Catalog '88 and the 1987 and 1988 Chestnut Catalogs to determine what marks appear on the merchandise and whether the catalogs have been altered.[19] Her most important finding for our purposes concerns the shoe in item E. on page 7 of the STEALTH Catalog '88: her examination revealed the letters 'SEN' and a portion of a 'T' and an 'A' on the shoe upper. She found no indication that the STEALTH mark appears on the shoes in items D or E.

"Marsh's other primary conclusion is that the STEALTH Catalog '88 was created using the Chestnut Catalog '88 as a base. She opined that someone had pasted cut-outs of the word STEALTH over the printed word SENTRA on several pages in the Chestnut catalog and then photocopied the pages to make the STEALTH catalog. Her examination revealed 'trash lines' and stray marks — which she testified are hallmarks of cut-and-pasted material — surrounding the word STEALTH on many pages in the catalog; that the font on STEALTH in many places does not match the printing in the rest of the catalog; that the word STEALTH is often misaligned, cut off, or runs into other words;

and that the catalog's print lacks sharpness and exhibits toner instead of printer ink. This led her to conclude that the STEALTH Catalog '88 is an altered document. She could not date it, however.[20]"

COMMENTARY: There was no testimony by Marsh regarding handwriting, but I include this case since Marsh's skill in handwriting identification was argued as showing her other skills were unreliable if not nonexistent. A bit of twisted logic, but footnote 19 states: "SI attacks Marsh's qualifications by seizing on her testimony that her primary area of expertise is handwriting analysis. This does not negate the numerous qualifications in Marsh's CV, which include three board certifications in document examination, extensive training in the area, and several publications on the topic of document examination. See Marsh Aff. Ex. A."

Why would she be attacked with such an illogical argument? Footnote 20 provides the answer by saying that Marsh observed "many other bizarre inconsistencies in the catalogs," and proceeds to list some of them. The opposing party had no other way to answer to the unanswerable truth. I have had similar irrational arguments tossed my way. If it is a matter of handwriting identification, one does not belong to the narrow-minded clique that the opposing examiner belongs to and that requires ignorance of vast areas of scientific discoveries about handwriting. Therefore, one's lack of ignorance proves lack of knowledge. If it is anything else but handwriting, one is a master of handwriting in all its dimensions and so cannot possibly know anything else. After all, the opposing examiner who belongs to all the prestigious organization (meaning a closed clique) has no idea what the human graphic motor sequence is, or rhythmical progression in handwriting, or graphic maturity, or the eight directional movements in handwriting, and much else within the vast areas of the art and skill of writing.

27. *U.S. v Bowman* (US DC WA 1998)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. I have not obtained a copy of the case report; however, I came across 215 F.3d 951 (2000), *U.S. v Ray Lewis Bowman*. This other Bowman with a partner robbed a number of banks for a record \$4.4 million net. The report makes for quite entertaining reading of two men who might one day become folk heroes in the tradition of the James brothers.

1999

28. *BCCI Holdings (Luxembourg), Societe Anonyme, et al., v Khalil, et al.*, 56 F.Supp.2d 14 (U.S. DC D.C. 1999)

At page 28: "To distinguish appearances from economic reality, the Liquidators relied on two experts. Dr. Audrey Giles ('Giles') testified as to which signatures on key documents appeared to be Khalil's genuine signature. Khalil did not offer a competing expert, and the Court finds Dr. Giles' testimony to be credible and unrebutted.[15] The

Court finds that all of the signatures Dr. Giles testified to have been more likely Khalil's than not, were in fact Khalil's signatures.”

COMMENTARY: Dr. Giles issued a report asserting the forged portions of Sir Roger Casement's diaries which falsely represented him as sexually perverted were genuine. My review of it, pointing out her flawed theories and her actual reporting of evidence of forgery, is posted open access on Internet Archive.

29. *U.S. v Brown*, No. CR 99-184 ABC (U.S. DC C.D. CA 1999)

COMMENTARY: SWGDOC gives this notation: “Check forgery case in which the defendant disputed the reliability of the government's handwriting expert's testimony that the defendant authored the forged signature. After holding a *Daubert/Kumho* hearing, the court (Judge Collins), adopts the *Hines/McVeigh* approach by permitting the proffered expert to testify without rendering ‘an ultimate conclusion on who penned the questioned writings.’” I have not obtained a copy of the case report.

30. *U.S. v Hines*, 55 F. Supp. 2d 62 (U.S. DC D. MA 1999)

After a *Daubert/Kumho* hearing, it was ruled that the handwriting expert may testify to similarities between the questioned writing and defendant's but not identify defendant as writer. Denbeaux was for defense, Kam for Government, and Harrison was trial expert. Denbeaux and Kam were not called at trial because of restriction placed on Ms. Harrison.

At page 65 there is a nice discussion of the difference between scientific consensus and jury finding.

Quoting Denbeaux, the Court observes that Harrison's results might be different if given several samples of people writing similarly to Hines.

COMMENTARY: The last sentence above illustrates how the anti-expert experts employ speculative ruminations and offer them as scientific evidence. Yet opposing attorneys do not seem to know the rule against speculative expert opinions. A finding of fact based on speculative “scientific” evidence, which is inherently unreliable both by scientific method and by case law, is itself unreliable and thus an injustice to the party against whom the finding of fact is made.

2000

31. *Aptix Corp. et al. v Quickturn Design Systems, Inc.*, 2000 US Dist LEXIS 8408, District Court Decision (ND CA 2000); affirmed in part, vacated in part, 269 Fed.3d 1369, 2001 U.S. App. LEXIS 24047, 60 U.S.P.Q.2d 1705 (US Ap Fed Cir 2001); rehearing denied, 2001 U.S. App. LEXIS 27844 (US Ap Fed Cir 2001)

Using a copy of one fabricated notebook, a Dr. Mohsen handwrote a fabricated second, leaving impressions on the copy. Actually, with copies four versions were involved. When discovery was compelled, Dr. Mohsen reported that his car had been

broken into and the notebooks stolen. He then presented a 1989 Daytimer to support his patent claims, but the ink was not manufactured until 1994. Then portions of the missing notebooks were mailed to him anonymously. Other documents returned had an incorrect ZIP Code but the anonymous mailer used the correct one. The Court noted that in five instances in the notebooks "1998" was written first and changed to "1989." Dr. Mohsen's brother witnessed pages in the notebooks by writing "read and understood" and signing, five such pages being blank but for a large X. At an evidentiary hearing Dr. Mohsen took the Fifth. The District Court's finding of falsification and extreme litigation misconduct was upheld upon appeal.

COMMENTARY: Neither the ink expert nor the method used to date the 1994 ink is identified in the appeal decisions, but the District Court decision sets it all out. Opinions of Speckin for defendant are generally accepted, while those of Lyter for plaintiff are critically assessed and rejected when at odds with Speckin's. Relative ink aging is rejected, though Brunelle testifies in its favor.

EEOC v Ethan Allen, 259 F.Supp.2d 625 (US DC N.D. Ohio 2003), offers this quote from *Aptix*: "The Court will not place any reliance on the results of Expert Speckin's 'relative-ink-date testing,' also known as 'accelerated aging.' The Court recognizes that the methodology is vouched for by both Experts Speckin and Brunelle, the latter especially preeminent in the field. The problem is that the test tries to draw large conclusions from tiny differences in leach rates and to do so after artificial 'accelerated aging' (i.e., heating in an oven) of part of the test sample (so as to provide a 'known' old sample for comparison). Each was tested at different durations of leaching to detect differences in the leach rates. In all cases, most of the differences at various durations were inconclusive and, at most, only a few were conclusive."

32. *Noble v Sheahan*, 116 F.Supp.2d 966 (US DC N.D. IL 2000)

Expert testimony regarding handwriting was not permitted, seemingly because the handwriting identification report it would address was not permitted into evidence. I give extended quotes on the two rulings from page 971:

"Pursuant to Federal Rules of Evidence 402 and 403, we will exclude Skinner's December 14, 1998 report. First, under Rule 402, the report will be excluded because the report itself is not relevant to the disposition of the pending matter. It is Swaine's reliance on this report, not the report itself, that is relevant to Defendants' ability to establish that it had a legitimate, nondiscriminatory reason for the employment decisions they made regarding Plaintiff. Second, under Rule 403, this report will be excluded because its probative value is substantially outweighed by its prejudicial effect. Given Swaine's expected testimony, the report itself would be cumulative, only minimally probative, and unduly prejudicial."

And then immediately after the above:

"Finally, pursuant to Federal Rule of Civil Procedure 26(a)(2), and this Court's Order dated August 9, 2000, Defendants will be barred from introducing the testimony of

Jeanne S. Brundage, or any other employee of the Illinois State Police, Division of Forensic Services, concerning the results of Skinner's forensic handwriting analysis.”

COMMENTARY: These rulings could be revisited out of the presence of the jury depending on developments during trial. Reliability was not a factor in the rulings.

33. *U.S. v Alteme*, No. 99-8131-CR (S.D. Flor. April 7, 2000)

COMMENTARY: A source said this was a *Daubert* handwriting case, but I have not been able to retrieve it.

34. *U.S. v Frame*, Criminal Docket No. 2:99CR-2 (U.S. DC E.D. TX 2000)

At the first trial which ended with a hung jury, Mr. Lesnevich testified that defendant had written at least part of many incriminating documents. At the second trial before The Honorable T. John Ward, on May 23, 2000, Mr. Lesnevich again appeared as handwriting expert for the prosecution. On cross-examination, at page 133, lines 20-24, this admission finally occurred:

“Q. Well, when you say it’s a possibility, you’re telling us, in effect, in plain English, ‘I can’t tell you either way if he wrote or didn’t write part of those tickets I examined’?”

“A. That’s correct.”

COMMENTARY: The jury acquitted Mr. Frame of all charges. However, that did not prevent the same expert from testifying with assurance in the subsequent civil case brought by Frame’s employer that Frame had written the same tickets. Mr. Frame told me that at the start of the civil trial, the attorney, who had also been his criminal defense counsel, asked the judge if he could withdraw. Permission was granted. Mr. Frame asked leave to find another attorney. That was denied, and trial started immediately. He was not even given the contact information for either Ms. Linda James or myself, the two document examiners his criminal attorney, who was also later civil attorney, had retained and from whom critical defense material on impeaching the handwriting expert had been obtained.

After the civil jury had found him civilly liable, he happened upon my contact information. I assisted pro bono on the civil appeal. However it was all fine with the Circuit Court of Appeals which upheld the trial court. Whereupon the employer was apparently content with firing him and not having to pay a pension but letting Frame keep what little property was left him.

35. *U.S. v Fujii*, 152 F. Supp. 2d 939 (N.D. IL 2000); 152 F. Supp. 2d 942 (N.D. IL 2000); affirmed, 301 F.3d 535, 2002 U.S. App. LEXIS 16684, 59 Fed. R. Serv. 3d (Callaghan) 512 (7 Cir 2002)

Although there is a subsequent appeal decision, the case is placed with District Court cases since the handwriting issue was apparently not appealed, certainly not being addressed in the appeal decision.

152 F. Supp. 2d 939:

Defendant moved *in limine* to exclude Karen Ann Cox, Government handwriting expert, who said that defendant had made out certain handprinted immigration forms. At page 940: “[T]he court concluded that, at least in the peculiar circumstances of this case, Ms. Cox’s testimony is inadmissible under the standards of *Daubert*.” Seemingly accepting Saks’ general views rejected by other courts, the Court states at page 941: “The government has offered no evidence that Ms. Cox’s expertise extends to making an identification of handwriting when the handprinter[s] in question are native Japanese writers.” Defense had an expert in English as a Second Language testify that Japanese are taught to write with exact precision and minimal individuality, a trait carrying over to their learning to write English: “In my opinion, it would be very difficult for an individual not familiar with the English handwriting of Japanese writers to identify the subtle dissimilarities in the handwriting of individual writers.” At page 942 Ms. Cox added two principles to the usual two: a skill level one cannot surpass and repeated habits and peculiarities. The last troubled the Court: “There is no evidence in the record that Ms. Cox has such expertise or has even considered the problem Mr. Litwicki has pointed out.”

2002 U.S. App. LEXIS 16684:

Fujii was convicted of immigration violations, including smuggling aliens into the country, and sentenced to 36 months of imprisonment.

COMMENTARY: There are excellent peer reviewed, published research papers on Asian writing and the special principles in identifying it. Anyone presuming to do such work and testify about it ought at a minimum read these papers and submit them as bases for an opinion. Further, there is no lack of Asian experts in America or experts who have experience in such matters, and one is well advised either to obtain assistance of someone competent in the language or to pass the commission to an associate who has greater competence in the specific issue in dispute. See reference to the Cheung and Leung paper in my monograph, *A Challenge to Handwriting Experts and an Answer to Their Critics*,” Section G.

As for Mr. Litwicki, all evidence from this man was based on his experience and experience alone, from which he “avers” all his opinions. Yet one of the most repeated criticisms of handwriting expertise is that it is based on experience alone, making it entirely subjective. Did Saks point out to the Court that perceived weakness in Litwicki, or did being in agreement with Saks and being hired by the same party as Saks make what is a flaw in handwriting experts a virtue in a friend?

Two things suggest handwriting expertise is often secondary evidence. The government did not appeal the rejection of it by the trial court. Conviction was had and upheld on appeal anyway.

36. *U.S. v Rutherford*, 104 FS2 1190 (District Court, Nebraska, 8:99CR120, March 2000)
Indicted for bank fraud and for retaliating against a witness, Defendant’s motion *in*

limine sought to exclude Government's document examiner, Marlin Rauscher. The usual *Daubert* experts appeared for each side, Saks and Kam. At page 1193: "[R]auscher admitted that he was not given an opportunity to examine a greater universe of people who could have possibly written the check and load-out sheet, other than the defendant who wrote the exemplars and the checks." Then he said identification is based on "subjective satisfaction of the FDE" and "he knew of no generally accepted published standards governing handwriting analysis that are both empirically based and regularly peer-reviewed." So the usual Solomonic split was given with additional ruling that there was no evidence addressed to support the nine-level scale of probabilities.

COMMENTARY: It becomes very tiresome reading the same superficial assertions by the same unknowledgeable "experts" for each side of the argument. However, in accordance with common prosecutorial practice only one potential writer, the one the Government had already accused of doing so, was provided to Rauscher to find out whether he was the writer or not. No matter how "above the fray" the examiner is, any appearance of suggestion or suggestibility will tarnish the greatest reputation for integrity. It ought to be routine to submit equal exemplars for all reasonably potential writers as much as practical in the situation; and they all ought, if possible, be submitted unnamed.

The "subjective satisfaction" criterion ought to disqualify any expert immediately, yet some examiners earn much by being completely subjective, and in so doing they tarnish the rest of us almost beyond future polishing and restoration. That the alleged nine-level scale is in truth a five-level scale has been discussed elsewhere herein.

In this case, an astute document examiner as defense consultant could have had the witness excluded, because there are objective, published, commonly employed standards for making handwriting identifications and eliminations. The numbers game in handwriting identification is that there must be *no* significant differences which cannot be reasonably explained and there must be a complex of significant similarities that characterizes the entire pool of exemplars and that makes for a reasonable probability that no other writer, from among those who could have done so, made the questioned writing. And that returns us to the efficacy of seeing exemplars from the entire pool of reasonably possible writers.

See also *U.S. v Hermanek*, a Ninth Circuit decision in 2001 and reported in 289 F3d 1076.

2001

37. *Jackson, Petitioner, v Anderson, Warden Respondent*, 141 F.Supp.2d 811 (D.C. N.D. OH 2001)

COMMENTARY: At trial testimony was received from a document examiner that defendant had written a note in question.

38. *Katt v City of New York and Dipalma*, 151 F.Supp.2d 313 (US Dist. Ct. S.D. NY 2001)

At page 323: “Though DiPalma testified that he could not recall whether he had inscribed the photograph (Tr. 631-33), plaintiff presented an expert forensic document examiner to demonstrate that he had. This expert witness, James M. Palladino, testified that upon comparing the inscription on the photograph with four separate samples of DiPalma’s handwriting (PX 34 & 35), his ‘definite and conclusive’ finding was ‘that the writing in the border of the photograph was in fact written by Anthony DiPalma.’ (Tr. 461.) Palladino painstakingly described to the jury the process by which he analyzes documents and handwriting samples, presenting the inscribed photograph alongside one of DiPalma’s handwriting samples, he demonstrated, letter by letter, ‘that the two sets were in agreement or similar in all important details and contained no significant difference.’ (Id. 467)”

COMMENTARY: “Painstakingly described” is certainly a commendable way to leave no doubt about one’s opinion and the bases for it.

39. *U.S. v Kurtze*, (N.D. IL Jan. 2001).

COMMENTARY: Robert J. Muehlberger, in an AAFS presentation in 2006, reported that the handwriting expert was permitted to testify only to similarities or differences. SWGDOC offers the same assessment.

40. *U.S. v Richmond*, et al., WL 1117735, 2001 US Dist LEXIS 15769 (E.D. Lou. 2001)

Defendant brought motion to exclude testimony of handwriting expert, Gale Bolsover. While “certain courts have recently rejected the testimony of certain handwriting experts, this Court refuses to say that such testimony is prohibited” under the rules. Assessing the testimony in context of the case, the Court noted that cross-examination would test reliability. Motion was denied.

COMMENTARY: No specific analysis was given of the challenge or of the Government’s response, but it is nice to know some judges refuse to have a lemming-like urge to jump off the cliff of reasonability into uncharted legal seas.

41. *U.S. v Saelee*, 162 FS2 1097 (D. AK 2001)

Handwriting evidence is not admissible as reliable. Michael J. Saks was expert for defense and John W. Cawley, III, for the government. The latter was excluded both to give observations and to give opinion. He did not come under Rule 701 as lay opinion (he claimed scientific underpinnings), nor under Rule 702 as expert (no showing of reliability), nor under 901, since 901(b)(3) is for an expert witness who must pass 702 first. The Court explained this was not a universal finding but that in this case the government failed completely to show reliability.

COMMENTARY: I think this case is an excellent analysis of the rules and of the studies handwriting experts relied on at that time. The theory given is the silly two rules

of no two persons writing like each other nor of any one person ever writing like oneself. This case is an excellent list of all the things a handwriting expert can do wrong in a *Daubert* hearing. Study it if you are a handwriting expert facing a *Daubert* hearing.

2002

42. *Church v Maryland*, 180 F. Supp. 2d 708 (U.S. DC D. Md. 2002)

This is a case I first came across because Dr. D. Michael Risinger discussed it in his compilation, *51 Tulsa Law Review*, “Appendix: Cases involving the reliability of handwriting identification expertise since the decision in *Daubert*,” 477-595 (2007). After saying there was no expert testimony since the document in question was not admitted for other reasons, Dr. Risinger says a very fairminded thing:

“The court observes, however, that even if the documents were relevant, it would exclude the unnamed document examiner, citing *Saelee*. While this invocation of case authority would be as questionable under *Kumho Tire* as those in *Johnson* or *Elmore*, it does show that in the federal courts the reliability of handwriting identification expertise has generated such divergent cases that both admission and exclusion can be undergirded by the inappropriate invocation of case authority.”

COMMENTARY: These comments persuade me I will have to review this entire text to see where I can add suggestions on how better to enquire of expert qualifications and performance. It is unfair to disagree with the solutions others offer while not offering proposed solutions oneself. Here I have an advantage in that I can offer some useful, technical tools for trial practice.

43. *Gomez v Ameripol Synpol Corporation*, C.A.No. 1:0??V-593. (US DC E.D. TX 2002)

A challenge under *Daubert* and *Kumho* to exclude Kay Micklitz as both a fact and expert witness failed. The decision systematically rebuts the most frequent arguments against private document examiners being admitted to testify in court. Some of these arguments are not working for the government, not taking government training, having a prior occupation, and knowing handwriting analysis while the governmentally trained examiner does not. The conclusion sums up the true basis of the challenge:

“Plaintiff’s spurious attempt to disqualify Micklitz is based on nothing more than his expert, Dale Stobaugh’s, uncorroborated assertions that he is right and Micklitz is wrong.”

COMMENTARY: One dearly hopes Stobaugh had nothing to do with the “spurious attempt” to disqualify Micklitz since he had testified in deposition that their opposing opinions were only professional disagreements. To have done so would have been both ungentlemanly and having an ever so slight taint of duplicity.

44. *U.S. v Brewer*, No. 01 CR 892, 2002, U.S. Dist. LEXIS 6689; 2002 WL 596365 (U.S. DC N.D. IL 2002) Memorandum Opinion and Order.

Defendant produced only in photocopy a letter allegedly authorizing him to withdraw funds from an aged and ill man's account. The man, now deceased, had denied giving such authorization. Government's document examiner, Danielle Seiger, had found "that the Questioned Signature superimposes one of the known signatures, and that extraneous markings on the Questioned Signature correspond to background printing that appears on the same known writing." Defendant requested an *in limine* hearing on basis expert handwriting evidence was inadmissible under *Daubert*. The Court, reviewing recent cases excluding handwriting comparison, concluded that "the government has offered no argument or even a hint of the type of evidence that it would put forward to prove the reliability of the handwriting comparison testimony.... Although a hearing might be helpful if the court were writing on a clean slate, the court's review of these very recent handwriting analysis cases, and in light of the very similar type of testimony at issue here, leads it to conclude that unless some new studies have been conducted in the past six months, the government would be hard-pressed to establish that Seiger's testimony would be sufficient under *Daubert*. Thus, the court grants defendant's motion to exclude Seiger's testimony."

COMMENTARY: I quote the ruling at length because it shows someone did a miserably poor job of presenting a brief or some argument for reliability of the proffered evidence. It was not a handwriting comparison such as the cases cited in the opinion considered, namely *Saelee* and *Fujii*. It was purely a technical comparison of written forms to show their physical correspondence. No conclusion as to authorship was required. There is a substantial amount of literature on the technique involved and its reliability, commonly known as a "cut and pasted" signature. Immediately after the last sentence quoted above, a paragraph cites two cases where testimony as to handwriting comparison was admissible. In 2002 the Court ought to have been provided a baker's dozen of cases in support of handwriting expertise, mostly at the appeal level. I believe this case is merely evidence of abysmal incompetence by the prosecuting attorney. Seiger's examination as described was masterful.

45. *U.S. v Broten, et al.*, Case No. 01-CR-411 (DNH) N. Dist. NY. 3/25/02.
Memorandum-Decision and Order.

Motion to exclude handwriting analysis evidence denied, because "number of cases which have admitted expert handwriting opinions is probative of the reliability of those opinions."

COMMENTARY: The reasoning that the *Broten* Court quotes from *United States v Buck*, No. 84 Cr. 220-SCSH, 1987 WL 19300 (S.D.N.Y. Oct. 28, 1987), is explicitly disapproved of by some critics. However, that other legal authors have accepted the anti-handwriting arguments may be cited as probative of unreliability. Are some legal experts unwittingly taking the position that rule of law from courts ought not be taken as reliable precedent if at variance with legal opinions about law in legal journals?

46. *U.S. v Gricco*, No. 01-90, 2002; WL 746037; 2002 US Dist. LEXIS 7564 (E.D. PA 2002); *mandamus* denied *In Re Carmen Gricco*, 2004 U.S. LEXIS 5449, 125 S. Ct. 290, 160 L. Ed. 2d 209, 73 U.S.L.W. 3215 (US 2004); *certiorari* denied in *Gricco v U.S.*, 2005 U.S. LEXIS 1875, 125 S. Ct. 1387, 161 L. Ed. 2d 157, 73 U.S.L.W. 3497 (US 2005)

Defendant's *in limine* motion to exclude identification testimony of handwriting expert Gale Bolsover was denied. Bolsover followed the same methodology that Bonjour had in *Velasquez* and that was recommended by SWGDOC: determine whether questioned writing permits identification; determine whether the exemplars do; if both do, compare their identifying characteristics; consider both similarities and differences. "An identification is determined when there is a significant number of similarities among handwriting characteristics absent any unexplainable differences." A reexamination is made by another expert at Postal Service, and a report issued only after agreement is reached. In essence defendant argued all standards are left to subjective opinion of the examiner as "proven" by the article, D. Michael Risinger, et al., "Exorcism of ignorance as a proxy for rational knowledge; the lessons of handwriting identification expertise," *University of Pennsylvania Law Review*, 82:805-17 (June 1989). As to the studies that article relied on, "The Court finds reliance on the studies flawed," and lucidly explains why, noting the article itself recognized the flaw at one point. Kam and Srihari are cited as supportive of reliability as are Circuit Courts affirming admissibility. The District Court found that the analysis "by Ms. Bolsover is based on valid reasoning and reliable methodology."

The Court also discussed the *Daubert* factors to which it added the Third Circuit's decision in *Downing*, 753 F2 1224, 1238-1239, which set forth factors not found in *Daubert* and allowed the flexible analysis *Kumho* approved of. The Court seems to say that the several factors are in addition to *Frye* general acceptance, not additional tests to pass to prove reliability. Footnote 8 at page 742 of *In Re Paoli Railroad Yard, PCB Litigation (Paoli II)*, 35 F.3d 717 (3 Cir 1994), gives the combined eight factors: "Thus, the factors *Daubert* and *Downing* have already deemed important include: (1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put." The Court was sufficiently satisfied on all points, noting for the last point that Ms. Bolsover and her colleagues did analyses for Federal Communications Commission, Smithsonian Institute and Postal Service.

COMMENTARY: This case is recommended to your study as an exemplary coverage of all factors. The *In Re Paoli Railroad Yard* reports are recommended to the study of all expert witnesses and attorneys calling them to courts following Federal rules. The various *Paoli* reports are 706 FS 358 (E.D. PA 1988); rev & remand, 916 F2 829 (3

Cir 1990) [*Paoli I*]; on remand, 811 FS 1071 (E.D. PA 1992); affirmed in part and reversed in part, 35 F.3d 717 (3 Cir 1994) [*Paoli II*].

47. *U.S. v Hidalgo*, 229 F.Supp.2d 961 (D.C. AZ 2002)

William J. Flynn and Moshe Kam were experts for the prosecution and Michael J. Saks for defense. The Judge discounts the Srihari study and citations to studies of twins. As to the latter, at page 963 the so-called “second principle” of handwriting identification is referred to: “Because forensic document examiners assert that no person writes the same way twice (*see* Flynn Aff. at 2-3), it is hard to say how the examiners accurately concluded that none of the participants wrote identically.” Then is immediately added the reason why the twin studies are not probative of reliability of handwriting experts: “Forensic document examiners were not asked to distinguish between the handwriting of identical twins in any of these studies. We therefore do not know whether the handwriting of identical twins is sufficiently differentiated for practical purposes.

“We are, of course, aware that it would be impossible to analyze and compare the handwriting of every literate person. Uniqueness must therefore be demonstrated, if at all, inferentially.” In the end, only examiners’ assertions support uniqueness.

The Government was more successful at establishing examiners’ skill as surpassing that of laypersons. At page 965, regarding Kam’s studies, Saks “claims that while most non-professionals performed poorly, a few performed as well as professionals. He contends that this shows that those non-professionals were motivated while others were not, and that motivation positively correlates with outcome.

“We do not agree. The worst professional made two errors. The best non-professionals made about nine errors, while the worst non-professional made about forty-four errors. Even the worst professionals clearly outperformed the best non-professionals.”

At page 967, the Court offers this logic: “If the principle of uniqueness could be proven, then one would know how to analyze handwriting or handprinting with an error rate of zero percent. But there is no support for the proposition, nor does the government contend that document examiners have a zero percent error rate.”

The Judge does a *Starzecpyzel* split-the-baby decision: Flynn cannot testify that defendant wrote any questioned document, but he can say anything else that would help the jury to make an identification or not.

COMMENTARY: In all these split decisions, the critics are right that they are inherently contradictory. The witness will give all the premises for his conclusion but leave the inescapable and inevitable conclusion to the jury. Nor would the witness ever give a fair presentation of all that would support the conclusion contrary to his own. That Saks is once more caught misrepresenting data from a research paper he claims to have studied is of no surprise since we will see from several cases considered herein that some people have a habit of doing that. The Judge also rightly rejected the speculative interpretation of the misrepresented data, namely that motivation accounts for all

differences in performance. Well, Saks must be strongly motivated to maintain his own level of error and of his baseless assertions. Not exactly baseless, since as Moenssens noted in his critique of *U.S. v Crisp*, courts and critics alike can only find “scientific” and academic support for the criticisms by quoting prior criticisms from the same sources.

48. *U.S. v Kirby* (ND GA May 2002)

COMMENTARY: In his 2006 AAFS presentation Robert J. Muehlberger cited this as a *Daubert* case finding for admissibility. It seems that he testified in this case.

49. *U.S. v Ramos*, 01 CR 0015 (ARR) (US DC E.D. NY 2002)

COMMENTARY: SWGDOC lists this case as one in which handwriting identification was admitted unconditionally. I have not obtained a copy of this case report.

50. *U.S. v Thiongo*, District Ct., Concord, NH, June 2002; affirmed, remanded for resentencing, 344 F.3d 55 (1 Cir. 2003)

COMMENTARY: According to a list from SWGDOC, the District Court waived a *Daubert* hearing. The appeal decision does not mention anything related to expert testimony or a *Daubert* hearing.

51. *U.S. v Vasques-Ruiz*, (US DC IL 2002)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was excluded. I have not been able to obtain a copy of the case report. Defendant’s name may be misspelled.

2003

52. *American National Fire Ins. Co. v Mirasco, Inc.*, 265 F. Supp. 2d 240 (US Dist. Ct. SD NY 2003)

“Horan, a forensic document examiner, will testify regarding the purported alterations, additions and changes to the purported Rejection Certificates. Mirasco challenges Horan’s qualifications inasmuch as he has not demonstrated a working knowledge of Arabic and also challenges his expected testimony as irrelevant or cumulative of testimony presented by other experts. To the extent that Horan’s testimony attempts to translate the marks that he claims were added to the Certificates, such testimony will be precluded. However, he is qualified to testify as to the addition of marks to a document, and such testimony is relevant to support the later anticipated testimony of the Insurers’ other witnesses who will testify as to what they believe are changes and alterations to the documents. Therefore, Horan may testify to the limited issue of what marks he believes were added, but not to the issue of what those marks mean.”

COMMENTARY: My guess would be that Horan would have never presumed to testify as the court forbade. One need not know the meaning of writings to make a proper identification nor to determine alterations, deletions or additions. One should, however, be conversant with the professional literature, especially reported research, regarding the script under examination.

53. *Equal Opportunity Employment Commission v Ethan Allen, Inc.*, 259 F.Supp.2d 625 (US DC N.D. Ohio 2003)

Erich Speckin was retained by Ethan Allen as its ink dating expert, so EEOC retained Al Lyter. Speckin was ruled unreliable in all his performances in the case.

COMMENTARY: Along with *In re Estate of Wang Tei Huei*, 2002 WL 1341762, [2002] HKEC 1424 (Hong Kong Special Administrative Region Ct. of First Instance, Nov. 21, 2002), this report is well worth study as a guide to concise and thorough analysis of theory and methods used by Speckin, and by inference as used by Lyter.

54. *U.S. v Adkinson, et al.*, 256 F. Supp. 2d 1297 (US Dist. Ct. ND FL 2003)

“Collins also claims expenses Ramsey paid related to expert witnesses. The EAJA expressly permits reimbursement for reasonable expenses of expert witnesses.[23] 28 U.S.C. §§ 2412(d)(2)(A). This case was very document intensive and verification of the authenticity of documents was critical to the defense. Collins claims \$6,862.59 for fees and expenses Ramsey paid to Lamar Miller, a document examiner. Miller’s affidavit (doc. 999 at tab 10) states that his rates for services were \$75.00 per hour for document examination and \$60.00 per hour for travel time. Miller’s affidavit states he billed Ramsey for a \$600 retainer, 21.6 hours of examination time, 18 hours of travel time, and three days of court appearance at \$600 per day.[24] I find these rates and hours to be reasonable. Ramsey’s trust account ledger lists a total of \$6,862.59 in payments to Miller, but Miller’s affidavit states a total \$6,022.59. Collins is awarded \$6,022.59 for Miller’s services. The government objects to the payment of Collins’ claim of \$6,800 in fees to David Crown and \$500 to James Daniels, both document examiners, because Collins offers no supporting documentation for those claims other than Ramsey’s trust account ledger. However, Ramsey’s ledger verifies these payments were made, and in the interest of leniency towards Collins’ record-keeping, Collins is awarded the full amount for these services. A \$50 retainer fee Ramsey paid to Charles Williams, a banking expert, is also granted. Accordingly, Collins is awarded \$13,372.59 for expenses related to lay and expert witnesses.”

COMMENTARY: The expert witness fees were ordered reimbursed by the Government because the failed prosecution of defendants for conspiracy was without merit.

55. *U.S. v Jabali*, 2003 WL 22170595 (E.D.N.Y. Sept. 12, 2003)

COMMENTARY: I could retrieve no case report. This case is discussed by

Risinger at pages 540-541 in his compilation: *51 Tulsa Law Review*, “Appendix: Cases involving the reliability of handwriting identification expertise since the decision in *Daubert*,” 477-595 (2007).

56. *U.S. v Oskowitz*, 2003 US Dist LEXIS 22093 (E.D. NY 2003)

Defendant brought motion to exclude expert handwriting testimony by John Paul Osborn for the usual arguments based on *Daubert*. No defense expert is indicated. The Government submitted no material to support reliability and cited one case, *U.S. v Rivera*, wherein the testimony does not seem to have been challenged. Nevertheless, Osborn could testify to similarities and differences but not to an identification.

COMMENTARY: Did Osborn supply to the attorney calling him at least papers from *Journal of American Society of Questioned Document Examiners* and *Journal of Forensic Sciences*, official journal of American Academy of Forensic Sciences, two organizations to which he belonged? Or papers presented at various conferences since the *Daubert* issue arose? And did not the expert and the Government attorney know of the circuit court opinions all coming down in favor of admissibility? Once more someone failed miserably. By 2003 no challenge ought to have been permitted to arise without the kind of reply given in *Gricco*, which is discussed herein.

Like many courts, this one accepted the critics’ argument that handwriting identification by experts has not been proven better than that by laypersons, so it fails an essential scientific test for reliability. I have refrained from commenting on this idea about scientific testing because it is so patently fallacious. I refrain no longer.

Have brain surgeons been compared to laypersons performing the same surgery? Have law professors been compared to laypersons teaching the same classes? Whoever thinks such a silly idea has any necessity in any forum other than those against which the anti-expert experts inveigh? Certainly not any field they claim expertise in. When testifying, they ought to be challenged: “Have you been tested against laypersons in the kind of expertise you claim today? No? Then how can you claim reliability since you have never undergone the very tests you demand of others?” If they are unfazed by the thought that they, who are above all others, need to subject themselves to the rigors others ought undergo, at least their absurdity can be shown if not some hypocrisy inferred.

Summaries and commentaries on all cases cited in Footnote 1 of *U.S. v Oskowitz* are included in this work.

57. *U.S. v Thornton*, Case No. 02-M-9150-01, Order (DC KS 2003)

Defendant was charged with theft of Demerol from Irwin Army Hospital at Ft. Riley, Kansas. Derek Hammond, document examiner, arrived at opinion “that there were indications that the defendant may have written certain entries” in narcotics logs. Thornton’s exemplars “appeared to be distorted or stilted. These specimens were rapidly written, illegible, and may not reflect the normal handwriting habits of the defendant....”

Hammond presented studies on premises of handwriting identification and its error

rate. Defendant provided an affidavit from Michael J. Saks. While studies validated handwriting individuality “with a high degree of confidence,” “Dr. Saks raises legitimate questions concerning the validity of these studies and the accuracy of handwriting identification in general.” His opinion should be taken seriously but Hammond is admissible and customary methods of testing testimony during trial can be employed as a safeguard. Handwriting expertise satisfies the *Daubert* criteria.

COMMENTARY: This is another instance of the bloodhounds of forensic criticism barking up the wrong tree. “Indications” means nothing as to proof of a writer’s identity other than there is reasonable suspicion. It is as if the expert had said: “Beats me whether or not she wrote the entries. I have an inkling she did but cannot prove it.”

This is the first case where writing quickly is a sign of possibly disguised exemplars, whereas writing too slowly is the usual sign of disguise. Why did not someone gather up defendant’s regular writing since she was a physician employee and surely had to write quite a bit during her career at the hospital?

58. *Wolf v Ramsey*, 253 F.Supp.2d 1323 (US DC ND GA 2003)

Testimony by Gideon Epstein for plaintiff was restricted to observations of “perceived” similarities and differences only. He could not express his opinion “that he is ‘100 percent certain that Patsy Ramsey wrote the Ransom Note.’” Additionally six other experts who examined original note said Mrs. Ramsey could not be identified as writer, so summary judgment was granted to defendants.

COMMENTARY: This is the standard compromise ruling, which I think ought not be given for reasons expressed elsewhere in this text. As the old saying has it, such a ruling is neither fish nor fowl nor good red meat. Epstein held ABFDE certification, which was taken from him by ABFDE officials. My understanding is that they needed to ax a number of the ABFDE founding members in order to obtain blessings from the forensics accreditation board. I believe the Court wrote at great length, far greater length than necessary, as if twice compelled to justify its justification for throwing the case out.

I may be wrong, but my impression is that none of the other six experts whose opinions favored Defendant and helped her prevail testified in this case, that their opinions were received as hearsay.

2004

59. *Adrian v Lafler*, 299 F.Supp.2d 754 (US DC E.D. MI 2004)

Defendant was convicted of burglarizing a bar. The police expert had examined and compared greases but not from Defendant’s gloves. Defense called Erich Speckin as an expert, and his testimony is summarized at page 758: “Erich Speckin provided expert testimony in the area of infrared grease analysis. Mr. Speckin testified that he examined random grease samples, as well as the known samples taken from the bar and Petitioner’s glove. He determined that all of the results were substantially similar such that the glove

sample could not be eliminated as matching the sample from the Alden Bar. Mr. Speckin further stated that he would have done more tests to determine the origin of the grease. The prosecution significantly challenged Mr. Speckin's credentials on cross-examination such that the trial judge indicated regret at qualifying him as an expert.”

COMMENTARY: Though this is not a handwriting case, the grease expert usually claims to be an expert in handwriting and documents. One wonders what other forensic areas he might claim expertise in. The judge’s regret gives comfort to those of us who confess to limitations in our expertise.

60. *Bangkok Crafts Corporation v Capitolo Di San Pietro in Vaticano; Capitolo Di San Pietro in Vaticano v Treasures of St. Peter’s in the Vatican Ltd., et al.*; No. 03 Civ. 0015 (RWS). (US Distr. Ct. S.D. NY 2004)

COMMENTARY: Relevant quotes: “In contrast to Loata’s hearsay assertions, the testimony of Capitolo’s handwriting expert and forensic document examiner have not been challenged, nor has the denial by Sodano of the authenticity of the January 2, 2001 letter.” Loata testified for Bangkok Crafts. Capitolo’s motion for partial summary judgment and all other issues discussed by the report were resolved against plaintiff.

61. *In re De Jesus Alatorre Pliego*, 320 F. Supp. 2d 947 (Dist. Ct. D. AZ 2004)

At page 949, having had “Attachment 2” identified as from Alatorre’s file, “The Government then called Joe Carbajal who testified he was a friend of respondent Alatorre’s and that he received checks from Mr. Alatorre in 1999 and 2000. He then testified that he compared the signatures on the checks he received to the signature on Attachment 2 of the certified documents (a contract) and he believes the signatures look the same. Respondent objected to this testimony and the Court found it to be improper lay testimony regarding signature identification. According to Mr. Carbajal, Exhibits 20 and 21 are checks he received from respondent.

“At the extradition hearing, over objection of the United States, respondent Alatorre called Sandra Ramsey who testified that she is a forensic document examiner with many years experience in law enforcement (state and federal), she is certified by the American Board of Document Examiners, she is published and belongs to numerous professional organizations and she has qualified as an expert witness in both state and federal court. She testified she took known signatures of respondent Alatorre and requested specimens from Mr. Alatorre, and compared these known signatures to the signature on Attachment 2 (the contract sent from Mexico which is the basis for the alleged fraud). It is her opinion that the signature on Attachment 2 is not a genuine signature but rather a simulation of the natural signature of the person who wrote the known signatures. She testified the signature on Attachment 2 is substantially different from the knowns and the requested specimens.”

COMMENTARY: Ms. Ramsey started her career as an Arizona government examiner and is associated with ABFDE, ASQDE and AAFS. One is curious to know

grounds on which the Government objected to her testifying. They would necessarily be far-fetched. Carbajal did a comparative examination, while a lay witness to handwriting must be restricted to memory, making a mental comparison only. The report seems to say that Ramsey took newly written exemplars from her client. If so, this violated the *post litem motam* rule and should have been objected to by the Government. The rule is that one may not create evidence specifically to support one's own testimony or claim, the landmark federal case being *Hickory v U.S.*, 151 US 303, 14 Sup Ct 334, 38 L.Ed. 170 (W Dis Ark. 1894); reversed and remanded 160 US 408, -- L.Ed. 474 (1896).

62. *Sajo, et al., v Bradbury*, No. CV 04-853-PA. (US Dist. Ct., D. OR 2004)

James A. Green, a forensic document examiner, "disagreed with decisions by Elections Division staff to reject circulator signatures. Green stated that the Elections Division's practice of using a single signature sample, usually from the circulator's voter registration card, often led to incorrect rejections because of natural variations over time and under different circumstances. Green testified that he would need at least two hours to conduct a single, straight-forward signature comparison. Green found that the Elections Division staff had received inadequate training in handwriting comparison."

The challenge was dismissed as moot due to legal factors.

COMMENTARY: However correct Green might have been technically, in pragmatic terms it would cost more to challenge an election on basis of invalid petition signatures than to hold the election. From information in the case report, I calculate at least 226 signatures of circulators were rejected as invalid. At one hour per signature for examination as Green would need if his skill improved over time, and assuming a low rate of \$100/hour, the Elections Division would have to expend \$22,600 to justify their decisions in this instance alone. Apparently, if they did not reject a signature, the usual brief, one-to-one comparison would be acceptable, otherwise the total would grow to 4,743 circulator signatures at \$100 a pop. Such a method would enrich document examiners but soon bankrupt the state. There do come moments when practicality trumps the self-interested ideals of academics, scientists and expert technicians.

63. *U.S. v Feingold*, CR 02-0976-PHX-SIMM (DC AZ 2004)

COMMENTARY: In a list from SWGDOC this is given as a case where a *Daubert* motion was denied. I have not obtained a copy of the decision. There were reports on other issues in Federal Supplement and of an appeal, 454 F. 3d 1001 (9 Cir. 2006), but they did not mention any *Daubert* issue.

64. *U.S. v Ferguson*, 2004 WL 5345480 (S.D. Ohio July 30, 2004); Case No. 3:003cr019 (6 Cir. 2004)

COMMENTARY: SWGDOC lists this case as one in which handwriting identification was admitted unconditionally. I have not obtained a copy of the case report. Professor Risinger discusses it in his compilation: *51 Tulsa Law Review*, "Appendix:

Cases involving the reliability of handwriting identification expertise since the decision in *Daubert*,” 477-595 (2007).

65. *U.S. v Rudolph*, Case No. 2:00-cr-422-CLS-TMP (United States District Court, N.D. Alabama, Southern Division. December 21, 2004)

In response to defense request for discovery of work product of Government experts, “The Government admits that neither Mr. Hankerson nor Mr. McClary kept any contemporaneous notes during their initial analyses of fingerprints and handwriting samples. Rather, the Government indicates that when these experts testify they will explain at that time points of comparison that support their opinions that the fingerprints and handwriting match those of the defendant. Because both experts analyzed hundreds of fingerprint and handwriting samples, but kept no notes of the process, neither is now able to reconstruct the actual points of comparison they originally relied upon years ago in reaching the opinions they expressed.”

The court ordered the Government to disclose by a date certain the opinions of the experts and the current bases for them, noting that waiting for trial would prevent a proper defense.

COMMENTARY: The defense should have moved for their testimony to be barred entirely for gross failure to follow basic scientific procedures and violation of industry standards as stated in ASTM standards, such as for lab notes and reports. If such a motion had been made, the court should have granted it. At some point the protection from integrity and honesty the Government enjoys in criminal prosecutions must end. The more stringent rules for civil cases should be made even more stringent, rather than hardly stringent at all, for criminal cases since so much more is at stake for a criminal defendant. I would not have thought Carl McClary would have followed such unprofessional work habits given his leadership role in ASTM. However, given the shameful suicidal demise of ASTM Sub-Committee E30.02 for Questioned Documents in 2012, mostly through heavy block voting by prosecutorial experts, one’s kind presumptions in thinking on several issues might need serious revision.

66. *Wheeler v Olympia Sports Center, Inc.*, Docket No. 03-265-P-H. (U.S. DC D. of ME 2004)

Defendant’s *in limine* motion was granted to exclude testimony of Wheeler’s handwriting expert, Curtis Baggett, the reasons being set forth in the segment titled, “II. Motion to Exclude Testimony.” Among other deficiencies mentioned is: “Here, Baggett offers no details about his methodology, beyond ‘comparing’ the handwriting on several documents.” Anyone could compare such handwriting and reach a conclusion, while Baggett’s bare bones statement about his methodology is insufficient for the court to determine whether it meets *Daubert* criteria.

COMMENTARY: This case is an exception to the criterion that only court decisions or case reports on in-person testimony are included in this compilation.

However, due to my regard for the extraordinary (“extra” meaning outside of, beyond what is ordinarily done, and this expert can be considered definitely outside of and beyond) claims of this individual, I include it. Hopefully cases like this one will inspire more judges to bestow on this witness the just measure of his practices as a handwriting expert.

NOTE: Soon after writing the above commentary, I added to the criterion stated another that any case with a decision regarding admissibility and/or reliability of handwriting expertise should be included. I forget which case it is, but the expert later said he did not testify in it. True enough, he did not testify because the judge forbade him to, and the judge did not have to hear his testimony to determine his unreliability and thus his inadmissibility in that case.

2005

67. *Elite Entertainment, Inc., et al., v Khela Brothers Entertainment, Inc., et al.*, 396 F.Supp.2d 680 (U.S. DC E.D. VA 2005)

At pages 687-688: “19. Gerald Richards, an expert in ‘questioned document’ examination, testified credibly and convincingly that the signature alleged to be Taneja's on each of these purported contract documents was absolutely identical in every respect, a fact that confirmed they were forgeries or fakes. To compare the documents, Richards colored each contract's signature page's text a different color. Then, by placing each of these differently colored pages one over the other using transparencies, Richards demonstrated the degree of similarity between the text on each signature page. Specifically, where the text of the two pages aligned perfectly, the two colors would ‘blend’ to form a third color, highlighting their identity. By contrast, where the text of the two pages did not align, the initial colors would remain visible. From this comparison of the various signature pages, Richards demonstrated and concluded that the signature pages of the Heartbeats-U.K and the Breathless-U.K. contracts were absolutely identical, including the signatures of both Taneja[10] and Jagroop Khela. From this, Richards concluded that the signatures on the Heartbeats-U.K. contract produced by Khela Brothers were photocopies of the signatures on the Breathless-U.K. contract, or vice versa, or that the signatures on both contracts must be *688 and were photocopies of yet another document that itself may or may not contain genuine signatures.[11]”

COMMENTARY: Testimony based on handwriting expertise is not involved, and I include this case precisely because Footnote 11 specified that Richards was not offered as a handwriting expert and gave no opinion whether the signature was genuine or not. Some voice the complaint that others who claim to be document examiners specialize in handwriting and signatures. The only two statistical reports I have seen were years apart and set prevalence of handwriting problems to be more than 80% of the work load in document examination. This complaint is somewhat like dismissing a general practitioner as a qualified medical expert because he only deals with 80% of the problems people

have and refers them to specialists, such as cardiologists, for special problems, such as heart attacks.

I have used the method described to compare documents from a common source. I was challenged once that this esoteric method enjoyed no general acceptance. I suggest document examiners hold on to case reports such as this one that describe precisely a test method they employ so they can give it to their attorney/client as legal support for their work when challenged. We cannot present case law or other legal support for our work, only technical support, especially in published research and in authoritative texts. Thus, attorney and expert can complement each other's efforts for a complete presentation.

68. *Legacy Vision v Yeamans*, Case No. CIV-04-1320-M (US DC W.D. OK 2005)

COMMENTARY: Robert J. Muehlberger, in an AAFS presentation in 2006, reported that the handwriting expert was permitted to testify only to similarities or differences. The SWGDOC list of cases gives the same report.

69. *U.S. v Crounsset*, 403 F.Supp.2d 475 (D.C. E.D. VA 2005)

COMMENTARY: The Government presented the testimony of Donna Eisenberg, a forensic document examiner.

70. *U.S. v Beddingfield*, Case No. 2:04-CR-346 TS (U.S. DC D. UT 2005)

COMMENTARY: The FBI repeatedly failed to disclose information and documents relative to its handwriting expert's proposed testimony. The Federal Attorney's office as well came in for critical evaluation by the Court. All charges were dismissed with prejudice due to extreme prejudice to defendant whose attorney is described as assiduous in trying to obtain what the court had ordered be turned over. All this violated both the Speedy Trial Act and the constitutional right to a speedy trial. Along the way the FBI switched to a non-FBI examiner, but no explanation is given for the switch.

It seems that a lot less violation of discovery rules is required for the defense to be hit with a sanction. The bottom line for our purposes was that effectively a government handwriting expert was not permitted to testify, though without statement as to what the expert contributed to the impermissible delay in discovery production. Faced with the same dilatory tactics in discovery, one might well find this case report hearkening and instructive.

71. *U.S. v Jabero and Jabero*, 368 F.Supp. 2d 702. 2005 U.S. Dist. LEXIS 9187 (U.S. DC E.D. MI 2005)

In a narcotics case, defendants' motion to suppress evidence seized pursuant to a search warrant was denied. A recording was transcribed and analyzed by stylistics expert, Dr. Roger E. Shuy. The most important point factually for the court seemed to be that portions of the tape were inaudible. On another issue, legally defendants failed to prove a

“reckless disregard for the truth” in the investigator’s sworn statement in obtaining the search warrant.

COMMENTARY: I wonder if the rule, that defendants had to prove reckless disregard for the truth, means either a simple and careless disregard or a careful and calculated disregard of the truth would be legally acceptable?

72. *U.S. v Ojeikere and Ojeikere*, 299 F.Supp.2d 254 (U.S. DC S.D. N.Y. 2004); No. 03 Cr. 581 (JGK), 2005 WL 425492 (U.S. DC S.D. N.Y. 2005); restitution order affirmed 545 F.3d 220 (2 Cir. 2008)

Defendants’ request for *Daubert* hearing on reliability of proposed testimony of Gus Lesnevich granted with agreement of Government that it was proper at least as to his conclusion of authorship of questioned writings. Defendants did not challenge qualifications, but only reliability.

COMMENTARY: These types of cases tend to repeat the same analyses in the same order and in the same words with references to the same cases. It would save us all much time and money if there were a book of boilerplate opinions so that courts could just reference the ones they want by number. I suspect they do have some such resource, but cut-and-paste entire passages, adding a little individual touch to bolster the image of personal perspicacity. Hopefully, I will come across a record of the *in limine* hearing so it can be added to this commentary.

Added later: Subsequently, the hope has been more than satisfied, since the challenge was dropped. After conviction, Defendant objected to order of restitution to victims, since he claimed they were in on the conspiracy. His contention was rejected:

“We hold that restitution under the MVRA may not be denied simply because the victim had greedy or dishonest motives, where those intentions were not *in pari materia* with those of the defendant. Thus, a would-be burglar who is robbed by a potential accomplice before either of them commits the planned crime may be entitled to restitution. On the other hand, restitution would not be appropriate if one burglar were to rob another of the proceeds of a heist they have just committed.” 545 F.3d 220 (2008), at page 223.

We indeed have an essentially just system of law when even a cheater may not be unjustly cheated.

2006

73. *A.V. by Versace, Inc., v Versace, et al., and related cases*, 446 F.Supp.2d 252 (DC SD NY 2006)

Footnotes 14 and 15 describe in detail the relevant issues. Julia Bevacqua was plaintiff’s handwriting expert.

“[14] Gianni objected to Bevacqua’s testimony not on the basis of her individual qualifications, but rather on the grounds that the testimony of handwriting experts does

not, as a general matter, satisfy the standards set forth by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999) for expert testimony. Mindful of the *Daubert* factors, the Court found Bevacqua qualified under Federal Rule of Evidence 702 based on her ‘knowledge, skill, training, experience, [and] education,’ Fed.R.Civ.P. 702, and because her testimony would ‘assist the trier of fact . . . to determine a fact in issue,’ *id.*, viz., the authenticity of the signature on the Letter of Intent. The Court is aware of no case in this jurisdiction in which a district court has excluded the testimony of a handwriting expert based on a finding that forensic document examination does not pass the *Daubert* standard. Moreover, although some district courts have restricted the testimony of handwriting experts to explaining to a jury the similarities and differences between known and questioned handwriting samples, see, e.g., *United States v. Oskowitz*, 294 F.Supp.2d 379, 383-84 (E.D.N.Y.2003) (collecting cases), the Second Circuit has never held that a handwriting expert may not offer an opinion on the ultimate question of authorship. In fact, every circuit court that has considered this question has concluded that a properly admitted handwriting expert may offer an opinion regarding the authorship of a handwriting sample if the factors enumerated in *Daubert* are satisfied. See *United States v. Prime*, 431 F.3d 1147, 1151-54 (9th Cir.2005); *United States v. Crisp*, 324 F.3d 261, 271 (4th Cir. 2003); *United States v. Mooney*, 315 F.3d 54, 61-63 (1st Cir.2002); *United States v. Jolivet*, 224 F.3d 902, 905-06 (8th Cir.2000); *United States v. Paul*, 175 F.3d 906, 909-12 (11th Cir.1999); *United States v. Jones*, 107 F.3d 1147, 1161 (6th Cir.1997); *United States v. Velasquez*, 64 F.3d 844, 850-52 (3d Cir.1995).

“[15] Instead, Gianni offered Mark Denbeaux, a law professor, to testify not as a handwriting expert, but rather as a critic of the field of handwriting analysis in general and to the weight that the Court should place on Bevacqua’s testimony. (Hr’g Tr. 215:24-216:4, May 10, 2006.) Denbeaux himself was clear that he was not a handwriting expert. (Hr’g Tr. 212:12-14 (‘I have never said I’m a handwriting expert. I am an expert on the methodology and defects of handwriting [analysis]. It is quite a different thing.’). The Court, recognizing its own capability of assessing the weight of Bevacqua’s expert testimony and thus finding that Denbeaux’s testimony would not ‘assist the trier of fact,’ Fed.R.Evid. 702, in determining the authenticity of the signature on the Letter of Intent, found that Denbeaux was not qualified to testify as an expert under Rule 702. (Hr’g Tr. 218:2-13, 225:11.)”

COMMENTARY: One wonders if any of the critics, self-styled as skilled in forensic belligerence, would class this judge among the hordes of judges who are scientifically too unenlightened to believe their pronouncements.

74. *Alfieri v Guild Times Pension Plan*, 446 F. Supp. 2d 99 (US Dist. Ct. E.D. NY 2006)

At page 107: “As a finding of fact, the Court finds that Janice Alfieri did sign the ‘spousal consent’ form. The Court credits the unrefuted testimony of Gus Lesnevich, the

forensic document examiner....” However, Lesnevich could not say anything else about the document, such as when it was signed. The court found it invalid after some close reasoning based on all the evidence.

COMMENTARY: This expert seemed exceptionally ubiquitous and clever.

75. *Bristow v City of Spokane, et al.*, Order (U.S. Dist Ct., E.D. WA, Oct. 16, 2006)

Detective C. Brenden’s examination of handwriting by comparing questioned and exemplar writings through imposition on a light table was found to be unreliable. Expert Chris Baggett said Brenden’s analysis had no scientific validity. For his “qualifications” to offer such an opinion, see the preceding *Wheeler* case. Expert Hannah McFarland found significant differences. The City failed to train fraud unit detectives properly in handwriting analysis yet depended on their analysis.

COMMENTARY: This decision can be considered a commendation for forensic handwriting identification provided proper methodology is employed. “Chris Baggett” is probably a mistype for “Curtis Baggett.”

76. *Brown v Primerica Life Insurance Company*, Case 1:02-cv-08175. United States District Court, Northern District of Illinois, Eastern Division, Charles P. Kocoras, Chief Judge, Decision (June 15, 2006)

The decision begins: “This matter comes before the court on cross-motions for summary judgment.

“For the reasons set forth below, we grant the motion of Primerica Life Insurance Company (‘Primerica’) for summary judgment. Plaintiff Carolyn Brown’s motion for summary judgment is denied.

“The facts pertinent to this cause of action were set forth in our prior opinion addressing Primerica’s motion to strike Curtis Baggett’s testimony. *Brown v. Primerica Life Ins. Co.*, No. 02-CV-8175 (N.D. Ill. Apr. 29, 2006). Accordingly, we restate them here only in truncated form.”

COMMENTARY: Brown had the burden of demonstrating for the Judge evidence credible enough to persuade a jury of her claim of forgery. Curtis Baggett was the staff she leaned on for support, but her leaning on it merited the words of the Prophet Jeremiah to ancient Judah when it leaned on Egypt to save it from the Neo-Babylonians. It was a shaft that not just snapped when leaned on but, splintering, impaled the one relying on it. Thus Baggett’s failure to demonstrate reliability for his proposed testimony doomed Brown’s case to failure. As the Court concluded: “The sole evidence Carolyn presented to counter Primerica’s evidence was Baggett’s testimony. In light of the fact that his testimony was stricken, all that is left is what Primerica offers. That track leads to a single terminal: Primerica complied with its contractual obligations. Accordingly, there was no breach. Primerica’s motion for summary judgment is granted and Carolyn’s is denied.”

Baggett was quoted later in 2006, in connection with his undoubted identification of John Mark Karr as writer of the JonBenet Ramsey ransom note, that he had been

disqualified as an expert witness in courts of law only four times. The *Brown v Primerica* case and others make us suspect the gentleman was being modest concerning his capacity to accomplish such a feat more often than any other proffered expert witness that many of us know about.

77. *Cuna Mutual Life Insurance Co. v Apodaca and Cruz*, U.S. District Court for the District of Colorado, Civil Action No. 06-cv-00582-MSK-MEH. Recommended Motion for Payment of Funds Deposited with Court (Sept. 29, 2006)

In a settlement process, handwriting expert, Darla McCarley-Celentano, expressed a highly probable opinion. This was legally “a conclusion” to satisfy a stipulated agreement by the parties for distribution of moneys. ASTM nine-step terminology was recognized as authoritative.

COMMENTARY: The ASTM terminology is granted another feather in its cap. Approvals by courts of law outnumber disapprovals.

78. *Dracz v American General Life Insurance Co.*, 426 F.Supp.2d 1373 (M.D. GA 2006)

At page 1377, the handwriting fact at issue was whether the “Yes” or “No” answer box for a question was checked first and who marked the other if not plaintiff. Plaintiff called Curtis Baggett “who examined a copy of Dracz’s insurance application and reached an opinion regarding the author and the sequencing of the marks in Question 5’s check boxes.” Defendant filed a motion *in limine* to disqualify Baggett, and the discussion goes to page 1380. Plaintiff claimed Baggett’s qualifications compared to the expert in *U.S. v Paul*, which is discussed later. The trial court explains why that is not so.

In summary, Baggett is ruled not qualified to testify. Further, even if he had been found qualified, his method was unreliable, and so he would still have been inadmissible. Don Lehw, a colleague of Baggett’s, submitted an affidavit. “The sole purpose of Mr. Lehw’s affidavit is to bolster the credentials and report of Mr. Baggett....” Since Baggett was disqualified, motion to strike Lehw’s affidavit was moot.

COMMENTARY: At page 1380 the Court notes that Baggett’s methods are never explained so that they can be assessed. We who have worked in the field know it is physically impossible to do what Baggett claimed, which is to tell which of crossing handwritten lines came first when one has only a copy to work with.

79. *Garcia v Bubbles Enterprises, Ltd.*, Civil Action No. H-05-3199. (US Dist. Ct. SD TX 2006)

Garcia denied signing an arbitration agreement, then his counsel stipulated that he had. Nevertheless, since it was a matter of attacking integrity, defendant “presented the testimony of an experienced document examiner” that Garcia had signed. The court made its own examination and concluded the same.

COMMENTARY: A case of routine admissibility, but not so routine the motive for the evidence.

80. *Jackson v Allstate Insurance Co.*, 441 F.Supp.2d 728 (U.S. DC E.D. PA 2006)

Elise Jackson was involved in an automobile accident and submitted a claim to her insurer, Allstate, for UIM benefits after the responsible party's insurance was insufficient to fully compensate her for her damages. Allstate denied the claim because Jackson had signed a waiver of under insured motorist (UIM) coverage, and produced a rejection form with Jackson's purported signature. Original documents were destroyed by Allstate and microfilm images retained. The best that Allstate's handwriting expert could do was say the questioned signature was "pictorially similar" to the known signature of Jackson. Jackson could not remember signing the UIM rejection form and alleged the signature was a forgery.

Initially, the court addressed the issue of who bore the burden of proving the forgery, Jackson or the insurer. Jackson argued that under Pennsylvania's Motor Vehicle Financial

Responsibility Law in the context of waiver of UIM benefits, if the insured asserts a possible forgery, the burden of proof shifts to the insurer to disprove forgery. The Jackson court rejected this argument, stating at page 733: "To hold that an insurer must be able to prove the validity of a signature in every situation involving § 1731(c), however, would impose an additional technical requirement on the insurer, namely, that of potentially being required to prove that every signature it maintains in its records is not a forgery.[Footnote [*11] 8] The statute simply does not require this."

Since Jackson could not prove forgery, summary judgment was granted to Allstate.

COMMENTARY: Corporations save money by destroying the original documents they obtain to be sure they know who is who and what is what. This destruction requires that imaged copies be used when the evidence that the originals held must be established, and much of the evidence is often lost. The corporation then profits a second time because those suing it can no longer prove their cases. I believe the law should charge the inadequacy to the corporation when its chosen way to image originals prevents an opposing party from proving its case against the corporation. Like the rest of us, they should have the oner as well as the benefits of the choices they make. Alternatively, before destroying originals they should be obligated to offer them to the customer who may retain them or make better quality copies.

81. *Truman Arnold Companies v Green, et al.*, Civil Action No. 5:03-CV-45. 2006 WL 5153151 (E.D. Tex) (US DC TX E.D., Marshall Division, 2006)

Linda James was handwriting expert for plaintiff and James R. Daniels for defendants. After an *in limine* challenge to both experts was considered, the judge ruled the challenges went to weight not admissibility and could be addressed at trial by either cross-examination or contrary evidence.

COMMENTARY: It appears that another judge has the good sense to make the parties try the issues on their merits rather than sidestep them through legal maneuvers.

82. *U.S. v Smith*, 05-CR-293A (U.S. DC W.D. NY 2006)

Defendant moved that the government's expert handwriting evidence not be admitted. The motion was denied without prejudice by the Magistrate Judge since it would best be brought before the judge to whom the trial would be assigned.

COMMENTARY: A rather sensible ruling.

2007

83. *Barnett, et al., v American Heritage Life Insurance Company; American Heritage Life Insurance Company v Angelina Virginia Barnett*, No. 06-2171 P (U.S. DC W.D. TN 2007)

With extensive explanation that repeats extended explanations that other federal courts gave leading up to a split decision on a motion to exclude testimony by Thomas Vastrick, handwriting expert, the court rules he may not say who did or did not write anything but may say anything else about his methods and observations that might persuade the jury to agree with his unexpressed opinion. The decision gives an extensive list of federal cases making decisions on such issues up to that time. All are considered in this compilation.

COMMENTARY: It would be fruitful for an attorney to author a survey of all such cases for their commonalities in legal reasoning and for a document examiner to do the same for their technical aspects. At least consider doing that if you are facing similar challenges to your own handwriting evidence. Why blandly and blindly repeat what did not work in the past for others in a similar situation?

84. *Bourne v Town of Madison*, 494 F. Supp. 2d 80, 2007 DNH 084 (US Dist. Ct. D. NH 2007); Civil No. 05-cv-365-JD (US Dist. Ct. D. NH 2010)

At page 91: "To be sure, Bourne's claims that the defendants forged a cover letter, and that, when accused of the forgery, they retaliated by pressuring the Carroll County Sheriff and the county attorney to bring criminal charges against Bourne, are more serious. Again, however, Bourne does not support these claims with competent evidence. Bourne's proposed handwriting expert opined that the handwritten signature appearing on the town's version of the cover letter is not Bourne's, and that the computer-generated character impressions on the allegedly forged cover letter are consistent with similar impressions on documents known to have been created by the town. The court has ruled, however, that Bourne's expert is not qualified to testify as an expert on the latter subject and that the methodology he employed with respect to the former subject is unreliable. See *Fed.R.Evid. 702* (expert testimony must be relevant and reliable). The court accordingly granted the defendants' motion to exclude Bourne's expert testimony. See Order of May 9, 2007 (document no. 95). Even if Bourne could establish the falsity of the signature by other means (e.g., by having the trier of fact compare the questioned signature with known Bourne signatures), he has not shown how he would prove that the

document originated from the defendants.”

The 2010 report is the final granting of summary judgment for defendants and dismissal of Bourne’s claims in Federal court.

COMMENTARY: The expert was disqualified twice; however, to his good fortune his name is not given nor the details why the two disqualifications. This has all the appearances of an instance where the expertise itself was not questioned, only the application of it by this particular expert in this particular case. This dispute has 14 reports on Google Advanced Scholar Search. There were additionally related Federal cases and State court cases going on more or less at the same time. Maybe the entire court system in New Hampshire would have closed for lack of business but for Mr. Bourne. He does remind me of what a friend used to say to describe certain people’s tenacity, being like a bulldog on a meat wagon.

85. *Pittman v General Nutrition Corp.*, 515 F. Supp. 2d 721 (US Dist. Ct. SD TX 2007)

In footnote 38: “GNC retained a forensic document examiner, who concluded that Pittman, not his daughter, signed the receipt.” Plaintiff’s explanations on this one point at two different hearings contradicted each other on several points.

COMMENTARY: A fair number of times a convincing testimony by an expert will inspire new, creative explanations from opposing parties.

86. *Thomas v Sheahan, et al.*, 514 F.Supp.2d 1083 (US DC N.D. IL 2007)

Defendants’ motion to bar the testimony of William F. Naber was granted because he was not an expert in documents and handwriting.

COMMENTARY: A routine case of rejection of the unqualified.

87. *U.S. v Lin*, Case No. CR-01-20071 RMW (PVT) (US DC ND CA 2007)

The defense motion to exclude the Government’s handwriting expert is denied: “The court does not suggest that Cawley’s opinions are free from challenge. To the extent that Cawley’s handwriting analysis is flawed, that fact may be brought to the jury’s attention, both through cross-examination and by presenting opposing expert testimony. However, the reliability of Cawley’s handwriting analysis is sufficient to allow the jury to consider it.”

COMMENTARY: William Cawley III wins one, though he must have done so on more than one occasion since the report said he had been a handwriting expert for almost 30 years. This compilation contains almost a handful where he fared not at all well, though the wording in this case intimates he barely squeezed by.

88. *U.S. v Yagman*, 2007 WL 4409618 (2007)

Bonnie Beal, handwriting expert, testified that she worked as a forensic document examiner for the Indiana State Police and was certified by the American Board of Forensic Document Examiners. Over defense challenge, she was found to be admissible.

Mark Denbeaux was also permitted to testify but had limits placed on his testimony. The usual academics on either side are cited and discussed as are most of the usual past cases.

COMMENTARY: A case of routine admissibility and the boringly routine and repetitive contentions in the long since repetitive and banal debate Denbeaux carried on for the defense.

2008

89. *American General Life and Accident Insurance Co. v Ward, et al.*, 530 F.Supp.2d 1306 (US DC ND GA 2008)

At page 1315: “Assuming [Marcus] Pittman has been found competent to testify by various Georgia courts, he still does not meet the requirements of Rule 702. Accordingly, he cannot testify as an expert in this case. The Court thus GRANTS plaintiff’s motion to strike Pittman’s report and DENIES defendants’ motions to supplement their response and counterclaims with a reference to Pittman’s report.”

COMMENTARY: This case is another well wrought guide on how to make every relevant mistake under applicable Federal rules as a proffered handwriting expert in composing a pre-trial report. One trusts Mr. Pittman needed this once only experience to learn his multiple lessons.

90. *Compania Del Bajo Caroni (Caromin) and V.M.C. Mining Company, C.A., v Bolivarian Republic of Venezuela, and Ministry of Basic Industries and Mines*, 556 F.Supp.2d 272 (U.S. DC S.D. NY 2008)

The central issue was whether or not an official of the Government of Venezuela signed a Waiver of Sovereign Immunity, referred to as “the Addendum.” If not, the suit could not go forward. Plaintiffs presented evidence from a document examiner that Sovereign Immunity was waived. However, it served to support falsity.

At pages 279-280: “It should also be emphasized that the conclusions of plaintiffs’ handwriting expert are entirely consistent with the probability of fraud. The expert reports submitted by the parties make clear that, as presaged at the August 22, 2007 conference, a duplicate document is not susceptible of the level of analysis required by a handwriting expert to reach a definitive conclusion as to the authenticity of a signature. In issuing a qualified opinion that Minister Ramirez did sign the Addendum, plaintiffs’ expert assumed that the ‘signature was naturally written’ because ‘it was not possible, with an examination of copies, to determine the execution’ of the handwriting at issue.[26] Of course, this assumption conveniently sidesteps the core issue in the case—was the signature ‘unnaturally’ or fraudulently placed on the document by, for example, mechanically or electronically transplanting an original signature?[27] Not only have defendants’ experts answered this question in the affirmative, their analyses of the differences in resolution and line spacing between the signature block and the other text on the same page are compelling evidence of fraud.[28]”

Footnote 26 states: “See Perkins Decl. Ex. H. The ‘execution’ of a handwriting sample includes such features as: (i) intraword connections (or the lack of a continuous writing movement); (ii) pen emphasis or pressure applied on particular strokes, often called shading; (iii) the direction of strokes in letter formation; (iv) the speed of execution as evidence by line quality; (v) smoothly rounded, sharply curving or elliptical or angular connecting strokes between letters; (vi) the starting of the initial writing movement before or after the pen contacts the paper; (vii) finishing the final writing movement before or after the pen leaves the paper; and (viii) habitual retouching or lack of it. Id.” Footnotes 27 and 28 only reference Defendants’ reply.

Three other documents were submitted in support of the Addendum. However, “Each of these suffers from the same defects as the Addendum itself. They lack any indicia of receipt into the Ministry of Energy and Mines’ records, and have not been authenticated....”

COMMENTARY: The plaintiffs’ document examiner based his opinion on an unverified assumption as a key premise. I suspect it is a matter of the deplorable lack of logic and grasp of elements of the human graphic motor sequence, as well as unawareness of what copy machines reproduce most faithfully versus features most subject to loss or distortion. I once participated in a proficiency testing program. The testing company required in almost every test that the test-taker make a critical assumption, and even several assumptions, in order to be marked correct. I began noting the unspecified data that had to be assumed as not permitting a reliable opinion. I was marked as “inconclusive,” whereas I was most definite and conclusive about the serious violation of the prohibition against speculative expert opinions.

Footnote 26 gives indication of serious misperceptions about rhythmical progression in handwriting. I will only discuss the first item, “Intraword connections (or lack of a continuous writing movement).” It is seemingly epidemic for handwriting experts to be so inexperienced as to confuse connection/disconnection with continuity/discontinuity. Connectives can just as easily disrupt a writing movement as a disconnection can, and vice versa. In general, the eight factors listed are hardly ever noted by handwriting experts in reports or testimony. Most dominant is the form (the shape or style) of letters, and then the form divorced from context and taken as a static feature versus a phase in an integral writing act and in relation to context of the neighboring letters and words. Yet I have not witnessed or read a deposition or cross-examination that grilled the expert on what the expert claimed could be observed in handwriting. This explains why the common ineptitude demands the expert be provided with exact same letters in the exact same order, though the very relation of letters due to their ordering will not be observed, reported or relied on for the opinion.

91. *Frey v Mykulak*, Civil Action No. 06-CV-5370 (DMC) (US DC D NJ 2008)

Robert I. Lewis, D.O., was offered by plaintiff to offer what the court found would be non-expert, non-scientific testimony regarding handwriting. Defense motion to

exclude Lewis was granted.

COMMENTARY: Another instance when a *Daubert* hearing serves everyone quite well, especially the long-suffering jurors who would now suffer less.

92. *Nord Service, Inc., v Palter*, 548 F. Supp. 2d 366 (US Dist. Ct. ED TX 2008)

Erich Speckin testified for Nord Service that signatures on certain documents were copied from other specific documents. He also testified to other evidence of false documents. The court denied a motion to strike his testimony because he had examined copies. The motion was based on *United States v Garza*, 448 F.3d 294 (5th Cir.2006), which held that “the lower court did not abuse its discretion when it excluded Garza’s forensic document examiner under Rule 702, as the expert based her opinions upon an examination of photocopied documents. Id. at 300. Garza’s expert planned to testify that the witness signatures on Garza’s confessions were forgeries. Id. at 299. The expert’s opinion was based upon examination of six photocopied documents, four of which the expert knew the witness had signed and two of which Garza alleged were forgeries.”

COMMENTARY: *U.S. v Garza* is discussed in this text. Reviewing it will show the summary in *Nord Service, Inc., v Palter* might give the wrong impression of the situation. However, this is not reprehensible since *Nord* is concerned with only one issue, whether use of copies will alone make handwriting expert testimony unreliable. The answer is no. In fact, in at least one instance in Nord examination of a copy of one document as compared to the alleged original of another enabled the expert to demonstrate a tracing of a signature on the document examined in copy onto the document examined in the original. Every document in copy is not only a copy of another document but also a document in its own right and in its own independent existence.

93. *Ragone v Atlantic Video*, No. 07 Civ. 6084 (JGK). (US Dist. Ct. SD NY 2008)

COMMENTARY: Peter Tytell, a handwriting expert, testified.

94. *Standard Ins. Co. v Burch, et al.*, 540 F. Supp. 2d 98 (US Dist. Ct. DC 2008)

COMMENTARY: Document examiner John Hargett testified.

95. *U.S. v Yass and Blechman*, No. 08-40008-JAR. (US D.C. D KS 2008)

In an *in limine* hearing Debra Campbell was found fully qualified and reliable as a handwriting expert.

“Defendant also relies on the report of Mark Denbeaux, a law professor at Seton Hall, who has spent years trying to convince the federal courts that handwriting analysis is not a proper subject for expert testimony.[10]

“The government responds that Blechman is asking this Court to do what no federal appellate court to address the issue has done—find that handwriting comparison testimony is per se unreliable and therefore inadmissible. The Court has reviewed the decisions of the federal appellate courts, including an unpublished Tenth Circuit opinion,

which have been unanimous in approving expert testimony in the field of handwriting analysis.[11] Rather than to exclude handwriting analysis as ‘junk science,’ as urged by defendant, the Court finds the process of handwriting analysis sufficiently reliable to satisfy *Daubert* and the Federal Rules of Evidence and declines to depart from the clear majority of courts weighing in on the issue. Moreover, despite the uneven treatment of handwriting experts by district courts, every appellate court to have considered the issue of handwriting testimony has held that the expert’s ultimate opinion was admissible.[12] Accordingly, defendant’s motion is denied. The Court likewise finds that a hearing on this matter is unnecessary until trial, when Ms. Campbell is available and the task before this Court will be to fulfill the rest of its gatekeeping role, if needed.[13]

“IT IS THEREFORE ORDERED BY THE COURT that defendant’s Motion to Exclude Testimony of Forensic Document Examiner (Doc. 52) is DENIED.”

I replicate all the relevant footnotes to assist the reader in beginning research into the issue:

“[9] See, e.g., *United States v. Hidalgo*, 229 F. Supp. 2d 961 (D. Ariz. 2002) (permitting testimony from handwriting analyst, but disallowing analyst from testifying about authorship); *United States v. Saelee*, 162 F. Supp. 2d 1097, 1102-03 (D. Alaska 2001) (disallowing testimony from handwriting examiner).

“[10] (Doc. 54.) Given the alleged inadequacy and conclusive nature of the government expert’s report, Denbeaux focused his report on his criticisms of handwriting analysis in general.

“[11] See *United States v. Mornan*, 413 F.3d 372, 380 (3d Cir. 2005) (explaining that ‘[t]his Court has previously held that handwriting analysis in general is sufficiently technical in nature to be the subject of expert testimony under Rule 702 and the standard articulated by the Supreme Court in *Daubert*[,]’); *United States v. Crisp*, 324 F.3d 261, 269-70 (4th Cir. 2003) (rejecting defendant’s challenge that the reliability of handwriting analysis testimony was insufficient to satisfy *Daubert*); *United States v. Mooney*, 315 F.3d 54, 63 (1st Cir. 2002) (rejecting argument ‘that the field of handwriting analysis lacks sufficient standards and testing to verify that analysts can accurately and definitively identify the author of a questioned document’); *United States v. Jolivet*, 224 F.3d 902, 906 (8th Cir. 2000) (expert allowed to offer opinion that the signatory on the questioned documents was likely defendant); *United States v. Paul*, 175 F.3d 906, 909-11 (11th Cir. 1999) (holding that district court did not abuse its discretion in permitting expert testimony as to authorship); *United States v. Jones*, 107 F.3d 1147, 1160-61 (6th Cir. 1997) (handwriting expert was allowed to testify that the signatures on documents in question were defendant’s); *United States v. Velasquez*, 64 F.3d 844, 848-50 (3d Cir. 1995) (government’s expert allowed to testify as to the authors of documents, but holding trial court erred by [not] allowing defendant’s expert, Professor Denbeaux, to testify regarding criticism of standards in handwriting analysis field); *United States v. Hernandez*, 42 F. App’x 173 (10th Cir. 2002) (unpublished in Federal Reporter; expert allowed to testify as to the similarities between writing on questioned documents and

defendant's known exemplars, noting that the exclusion of the expert's ultimate opinion was not before the Court).

"[12] See *United States v. Prime*, 431 F.3d 1147, 1154 (9th Cir. 2005) (permitting ultimate opinion that the defendant authored the note in question); *Crisp*, 324 F.3d at 269-70 (allowing ultimate opinion that defendant authored the note); *Mooney*, 315 F.3d at 63 (same); *Jolivet*, 224 F.3d at 906 (allowing opinion that it was 'likely' that the document contained the defendant's handwriting); *Paul*, 175 F.3d at 911 (permitting expert testimony that the defendant wrote the extortion note); *Jones*, 107 F.3d at 1161 (allowing testimony that signatures on various documents were the defendant's).

"[13] See *United States v. Ellis*, 193 F. App'x 773, 777-78 (10th Cir. 2006)."

COMMENTARY: The court states well and at length its reasons for denying defense motion to exclude Campbell's testimony. Nevertheless, I would not underestimate the anti-expert experts' ability to find something ambiguous in this and the many other similar rulings.

96. *U.S. v Yono*, Case No. 06-20479. United States District Court, E.D. Michigan, Southern Division. December 4, 2008.

"In his motion, Defendant states that 'his right to a fair trial was prejudiced by the admission of alleged "expert" opinion testimony, which allowed the government, on the eve of trial, to unfairly bolster eye witness testimony.' (Def.'s Mot. ¶¶ 4.) Defendant's assertion relates to the testimony of Richard Dusak regarding his opinion about signatures on various documents related to the case. Defendant received Dusak's report on June 19, 2008. The next day Defendant filed a motion to exclude Dusak's testimony or, in the alternative, for a *Daubert* hearing and the government responded. Trial began June 23, 2008. This Court held a *Daubert* hearing on the morning of June 25, 2008, and thereafter denied Defendant's motion to exclude Dusak's testimony. Dusak testified later that day.

"Defendant again fails to present any factual support or argument to establish that Dusak's testimony was erroneously admitted."

COMMENTARY: At least the complaint about the handwriting evidence was a new one, although a bit far out.

97. *Watts and Jones v Cypress Hill, et al.*, Case No. 06 C 3348, 2008 U.S. Dist. LEXIS 20647, 86 U.S.P.Q.2D (BNA) 1054 (US DC N.D. II E.Div. 2008)

This Memorandum Opinion and Order cites Federal Rules and cases setting the requirements for disclosure of anticipated expert testimony and of the content of expert reports. The reasons for striking testimony by Albert H. Lyter, III, as an ink expert are given in carefully, thoroughly and logically arranged detail. The entire memorandum opinion merits reading by any attorney who wishes to challenge ink expert evidence. This is a small but effective sample of the whole:

"In light of the foregoing standards, the Lyter [*7] report is patently insufficient. The report begins: 'A chemical and physical investigation, including magnification,

microscopy, infrared reflectance and thin layer chromatography (TLC), was conducted upon [the Contract] with the following results.’ (Lyter Rept., p. I.) At this point, one might expect that the report would provide some additional data or information: What was observed under magnification and microscopy? What are ‘infrared. reflectance’ and ‘thin layer chromatography’? What data resulted when these tests were performed? What scientific or technical principles allowed Dr. Lyter to translate the data he gathered into conclusions? Instead, the introduction is followed by a series of conclusory statements.”

Production of certain material and data that leave a non-expert mystified and an unaccepted invitation to attend the testing by Dr. Lyter were not remedial of the many and extensive failures of his report since plaintiff’s burden of disclosure was not met by imposing on defendant a burden of discovery.

COMMENTARY: I have been involved in several cases where Dr. Lyter was an ink expert for the opposing party. The *Watts* case describes every report by him that I have seen. My limited experience is that it is less difficult to prevent an expert from attacking a document by a single spoliating test, or by a series of spoliating tests, than to strike the results once the document has been expertly raped in the forensic laboratory. There is a rather suave way in which some ink experts say that poking more or less 20 holes the width of the writing line at the areas where the signature holds the most ink, and thus at critical turns and junctures, does no harm at all. Unless the court is shone a vivid illustration of the damage done in previous cases, the suave reassurance of the spoliating expert, who has done this many, many times at more or less \$5,000 per spoliating document, seems to be as charming as Orpheus’ divine singing.

2009

98. *Forsberg v Pefanis*, Civil Action No. 1:07-cv-03116-JOF-RGV. (US Dist. Ct. ND GA 2009)

It is well worthwhile to read the description of the testimony of the three document examiners, Farrell C. Shiver for plaintiff and both Teresa DeBerry and Steven Drexler for defendant. For present purposes the court’s rather lengthy summation of its findings will suffice:

“Based on the evidence before it, the court concludes that the signature on the Popke Statement is not Mr. Popke’s. Plaintiff’s highly qualified expert testified that the signature on the Popke Statement contained numerous significant differences from the known signatures of Mr. Popke. Mr. Shiver opined based on his analysis that it was ‘highly probable’ the signature was forged. Mr. Shiver stated his conclusion would have been of the highest level of certainty, but for the fact that he did not have an original of the Popke Statement to consider. As the Popke Statement was produced by Defendants, the fact that the original is no longer available weighs against Defendants. The court finds Mr. Shiver to be well-qualified....

“In contrast, Defendants’ first expert claims that the signature on the Popke

Statement is ‘disguised’ because of certain ‘habits’ that she discerned from the known signatures of Mr. Popke. However, these supposed ‘habits’ are features of the writing that are equally present and not present. Therefore, they cannot be ‘habits’ at all and certainly cannot be habits which would support a finding that the same person had formed the signatures. The court also notes that the testimony and qualifications of Defendants’ first expert witness were largely discredited on cross-examination.^{1]}

“The best Defendants’ second expert could opine was that his analysis was ‘inconclusive’ as to whether Mr. Popke had signed the Popke Statement. Defendants’ second expert also testified that the first part of the signature contains pen pressure points indicating the signature was carefully done. This opinion directly contradicts the testimony of Mr. Anderson and Mr. Pefanis that Mr. Popke signed the statement in a ‘rushed’ fashion. Mr. Anderson’s testimony is further called into question by the fact that he claims he did not tell anyone at the company that he was going to purchase a Lexus, yet he had possession of Mr. Pefanis’ Porsche to use for trade-in at the time of purchase — a fact which presumably indicates that Mr. Anderson had at least spoken with Mr. Pefanis about getting a new car.

“Mr. Popke, himself, has testified that he did not sign the document in question and that Mr. Pefanis and Mr. Bonertz had pressured him to sign the document even to the point of threatening his continued employment. Defendants have proffered no reason as to why Mr. Popke would be untruthful on this matter. Again, Defendants’ refusal to depose Mr. Popke also provides the court with some inference of what Defendants believe his testimony would be. Further, the veracity of Mr. Popke’s declarations is bolstered by the strength of Mr. Shiver’s testimony that the signature on the Popke Statement is not Mr. Popke’s.

“Finally, it has not escaped the court’s attention that Mr. Bonertz declined to testify at the hearing, despite the fact that Defendants’ pleadings had relied on his proffered testimony that he had witnessed Mr. Popke sign the statement and he was announced as a witness at the hearing.

“Having concluded that Mr. Popke’s signature on the Popke Statement is a forgery, the court next turns to consideration of the appropriate sanction.”

The sanction requested by plaintiff was imposed.

COMMENTARY: As hard as the experience seems to have been for Ms. DeBerry, the report gives ample evidence of potential for excellence. Here is a list of some but not all of the lessons the case gifts to Ms. DeBerry, and to the rest of us as well, which once learned will give her a successful career:

- a) Strengthen qualifications till the day one retires or dies, particularly broaden the sources and content of one’s education;
- b) Aspire to be certified by an organization that does not essentially sell credentials or hand them out upon a pretense of proper merit;
- c) Use terminology properly, for example knowing that a habit, not surprisingly, must be proven to be habitual;

d) Find a mentor kind of heart but merciless in teaching proper methods of testifying and of handling attack questions; and

e) Be more hypercritical of one's own performance than the opposition is so that one will be blessed with ever more lessons to learn. If we are not blessed with lessons to learn and demanding teachers to teach them, we will never be blessed with learning. If we cannot find a demanding teacher, we must be more demanding on ourselves to study than others ever are.

A final observation. Ms. DeBerry dodged the proverbial bullet by virtue of the judge's more than proverbial sense of fairness. Footnote one reads: "The court rejected Plaintiff's motion to strike Ms. DeBerry's testimony for lack of qualification. Although the court recognized that Ms. DeBerry did not have any formal education, the court noted that she had an understanding of the process beyond that which a layperson would."

99. *Guthartz v Park Centre West Corp.*, Case No. 07-80334-CIV-MARRA/JOHNSON. (US Dist. Court, SD FL 2009)

COMMENTARY: Document examiner Frank Norwitch testified to signatures on stock powers.

100. *Harding v Naseman*, No. 07 Cv. 8767 (RPP). (US Dist. Ct. SD NY 2009)

Harding, former wife of Naseman, claimed he had presented a fraudulent tax return in their settlement discussion, making a four-million dollar difference. Gus Lesnevich testified for plaintiff and Erich J. Speckin for defendant. Lesnevich said the same person made all handwritten entries on both returns, while Speckin said numbers in the fraudulent return had been traced from the genuine one. Because Lesnevich had longer years in practice and spoke with more assurance, the court credited his testimony.

COMMENTARY: A case of routine admissibility and routine lack of logic that longer years of practice make for greater reliability in an expert witness. Thus a bungler or hireling need only survive long enough to be ever more considered not a bungler but more highly credible.

101. *Mortgage Now, Inc., v Stone, et al.*, Case No.: 3:09cv80/MCR/MD (U.S. DC N.D. FL 2009)

In a discussion as to whether "Mortgage Now ... attempted to keep Stone's Lending Tree filters a secret while he was employed by the company [9]," the Court concludes it did not. Related to this issue, footnote 9 gives the only reference to handwriting expert testimony:

"Mortgage Now alleges throughout the second amended complaint that Stone was bound by a branch manager's agreement allegedly executed on March 22, 2006. Insofar as Mortgage Now relies on the agreement to show it placed reasonable restraints on disclosing the Lending Tree filters during or after employment, the argument is without merit. The agreement contains a confidentiality provision prohibiting Stone from

disclosing Mortgage Now's 'plans and techniques for the conduct of its business,' including all trade secrets. A signature purporting to be Stone's appears on the document, but testimony by handwriting expert, James Orsini, showed the signature is a forgery. Mortgage Now's president, James Schwartz, also failed to sign the agreement. The confidentiality provision, therefore, was not a condition of Stone's employment because the agreement was never executed."

COMMENTARY: I have no information of a James Orsini. There is a handwriting expert in Florida named Richard Orsini.

102. *Smith v McDaniel, et al.*, No. 3:06-cv-00087-ECR-VPC. United States District Court, D. Nevada. July 10, 2009.

"According to the testimony of the State's forensic handwriting expert, block printing commonly was used to disguise the writer's handwriting. The block printing on the note also had a tremor in it, which also possibly may have reflected an effort to disguise the writer's handwriting, among other potential causes. The examiner was unable to identify the block print as a specific individual's writing based upon the non-block writing samples that he was provided. His findings thus were inconclusive, without including or excluding any individual."

COMMENTARY: According to Footnote 55 it seems that the expert's name is Whiting.

103. *U.S. v Jenkins*, No. 3:09-CR-42 (US DC E.D. TN 2009)

Defendant moved to have the prosecution's fingerprint and handwriting experts excluded for failure to comply with applicable rules of evidence and for not adhering to the schedule ordered by the court. The prosecution's reasons for its noncompliance and why it was all excusable include this for the handwriting expert: "Finally, the Government states that it still has not provided McClary's handwriting analysis report as of the time of the Supplemental Notice, because it has yet to receive it."

COMMENTARY: The decision was to credit Defendant's assertions but grant the prosecution's solution which essentially meant excusing all the egregious violations by the Government. As is usual, the nearly universal permission for the Government to violate rules without sanction of any sort results in giving the prosecution its requested continuance with a new deadline for expert disclosure. Maybe by then McClary would have his report with all the features it should have had much earlier. Cynics, which thus excludes you and me, would think, if not say, that, if you work as an expert witness for criminal defendants, do not expect the least leeway for even the barely imaginable violation of the tiniest requirement.

104. *U.S. v Khellil*, 678 F. Supp. 2d 713 (US Dist. Ct. ND IL 2009)

This decision gives one of the most extensive discussions of document examination testimony and its legal aspects than most any I have seen. One needs to read

the case report to follow all the ins and outs of it. In brief, here are what I think are the major issues addressed.

After the prosecution rested, defense counsel wanted to call Bonnie Schwid, a forensic document examiner, as a defense witness. Upon objection, testimony was limited to Social Security documents since that was all that was disclosed prior to trial. In order to have Schwid testify to other issues on rebuttal, defense counsel called a prosecution expert, Joan DiMartino. Contrary to defense counsel's ill-laid plans, DiMartino testified to defendant's disguise of his exemplars and much else not helpful to the defense. Further, rule prevented rebuttal of testimony the prosecutor did not elicit but only defense counsel, so that Schwid still could not offer rebuttal testimony, also since it would be "an end run" around the Court's ruling on the matter.

Several times the Court had to call attention to defense counsel's poor performance in order to protect defendant's right to a fair trial, but always out of hearing of the jury and out of defendant's hearing except on one occasion. For post-trial motions, the Court made a Federal Defender Panel attorney available to offer defendant legal counsel if he so chose.

Defense trial counsel made post trial motions then withdrew, and substitute counsel made post trial motions for defendant, including the inadequacy of trial counsel. The Court granted acquittal because the government failed to prove statements supporting both counts false and also, if the statements were indeed false, the government failed to prove their materiality to the counts charged. Defendant still faced the possibility of prosecution as proceedings on his application for permanent residence were pursued and completed.

COMMENTARY: I imagine Ms. Schwid, a member of AFDE, still cringes from the sabotage by defense counsel of all that she could have testified to. It is the kind of thing that in a future case an unscrupulous opposing counsel might misrepresent repeatedly as her inadequacy.

105. *U.S. v Taylor*, 704 F.Supp.2d 1192 (US DC D NM 2009/2010)

COMMENTARY: Titled "Memorandum Opinion and Order Granting United States' Motion to Exclude Expert Testimony of Adina Schwartz," I include this as a guide on challenging anti-expert experts who are mere critics of experts in a field they themselves admittedly are entirely incompetent in, although the expertise in this case was firearms investigations. The case report discusses and relies on handwriting cases where critics of the expertise were both admitted and found unqualified. Dr. Schwartz was an academic who in the past had misrepresented what publications said or meant. The trial court also said it was a matter, not of a difference in opinion, but a difference in the kind of expert.

I believe that at least some anti-expert experts who attack handwriting identification misrepresent in a similar way what history and case reports say, and they lack correct understanding of the fundamentals of handwriting identification, even of

identification itself, and of the law on admissibility of expert testimony. As proffered expert witnesses, they could never satisfy what they falsely contend are the essential requirements for reliability of expert testimony.

The case report has extensive citations to and discussions of cases regarding admissibility of handwriting expertise and of its critics, but no handwriting expert was offered.

2010

106. *Burrows v Orchid Island Trs, LLC, Successor to Opteum Financial Services, LLC; et al.*, Case No. 07cv1567 - BEN (WVG); Order on Motions *In Limine* (US DC S.D. CA 2010)

Motion *in limine* granted to exclude handwriting testimony by Curtis Navy for plaintiffs. There had been no statement as to his qualifications.

COMMENTARY: When a man courts a lady, she will hardly agree to set a date when he forgets to mention the proposal for marriage is based on his ability to be the kind of husband she is looking for.

107. *Cornejo v Spenger's Fresh Fish Grotto, et al.*, No. C 09-05564 MHP (US DC N.D. CA 2010)

Cornejo sued on basis of a hostile work environment. Defendants demanded arbitration, but Cornejo disputed his signature to the arbitration agreement. At the judge's suggestion the parties agreed to a joint expert, Martha Blake. She reported that Cornejo had signed the arbitration agreement, which led to his acknowledging the genuineness of the disputed signature. The judge ruled that Defendants had the right to arbitrate the dispute, so there would be no trial with a jury.

COMMENTARY: The expert's report was received by the court as the evidential basis for the ruling. Both parties stipulated to the expert's qualifications and opinion, so I consider it to be equivalent to sworn testimony subject to cross-examination.

108. *DAG Jewish Directories, Inc. v Y & R Media, LLC*, No. 09 Civ. 7802 (RJH). (US Dist. Ct. SD NY 2010)

Quoted at length is one of the Court's summaries of the document examination issue: "Plaintiff contends that the testimony of its document examiner, John F. Breslin, 'supports that the Dapey Assaf signature line was present at the time of the presentation.' (Atzmon/Cohen Mem. 18.) It does not. Mr. Breslin only found, on the basis of 'trash marks' common to each document, that the forged 31200 contract and several real Y&R contracts were from the 'same common source.' (Breslin Decl. at ¶¶ 20.) However defendants concede that their contracts were all from the same source, Donovan for Printing. As even plaintiff admits, 'Y&R's [sic] must have given Donovan for Printing a DAG contract, and instructed them to reproduce it almost exactly.' (Atzmon/Cohen Mem.

24.) The forgery occurred thereafter, when plaintiff acquired one of the resultant Y&R contracts, altered it to add a Dapey Assaf line, and then submitted it to the Court as if it had acquired it in that form. The trash marks would have been copied in that forgery along with the rest of the document. To put it another way: if the source generated the real Y&R contract, and the real contract was used to create the forgery, then both the forgery and the real Y&R contract would be descended from the same original source. Mr. Breslin's finding that the Y&R contracts are from the same common source is therefore unremarkable, and does not refute defendants' version of events.

"In light of the overwhelming objective evidence demonstrating a forgery, plaintiff's assertions that the 'Dapey Assaf' signature line on Hearing Exhibit 2 is not a forgery cannot be believed. Moreover, it could not have been accidental: a forgery of this nature could only result from intentional bad faith."

COMMENTARY: Plaintiff's own expert showed expertise and integrity in setting forth the physical facts as he found them. He was certainly helpful to the Court. There were other fraudulent practices by plaintiff, such that the Court dismissed the complaint with prejudice and awarded attorney fees involved in responding to the forged evidential document. Please note neither party was a Jewish religious entity or related to one, but both were commercial entities.

109. *Park West Galleries, Inc., v Global Fine Art Registry, LLC, et al.*, Case Nos. 2:08-cv-12247, 2:08-cv-12274 (US DC E.D. MI 2010)

"[Robert] Wittman, who investigated art fraud for the FBI for 20 years, has investigated the authenticity of the Dali artwork at issue on Plaintiff's behalf. This investigation appears to consist mainly of interviews with persons associated with the Dali artwork at issue. In Wittman's deposition, he comments heavily on the credibility of those he interviewed as part of that investigation, and his conclusions appear to some extent to be based on his credibility determinations.

"Defendants seek to preclude Wittman's anticipated testimony because they find it to consist of little but testimony that boosts the credibility of other witnesses or persons involved with the Dali prints. Defendants also state that Wittman has indicated that he is not an expert on Dali art, and that he is not an expert on handwriting or authentication techniques."

COMMENTARY: Plaintiffs could attempt qualifying Whitman as an expert on art fraud at trial, but he may not testify to his FBI status nor on credibility of other witnesses. So it seems that by default he was not considered by his clients as, nor did the court consider him as, either an art expert per se or a handwriting expert. This is the kind of case that challenges the parameters as to what will come under the umbrella of one's own stated scope of research.

110. *U.S. v Brooks and Hatfield*, No. 06-CR-550(S-1)(JS). United States District Court, E.D. New York. January 11, 2010.

COMMENTARY: Defense motion to preclude testimony of John Paul Osborn was denied.

111. *U.S. v Solomon, Elder and Johnson*, Case No. 08-00026-03/05-CR-W-FJG. United States District Court, W.D. Missouri, Western Division. June 14, 2010. Appeal decision affirming convictions, *U.S. v Elder; U.S. v Solomon*; 682 F.3d 1065 (8 Cir. 2012)

“Elder notes that, from all indications, the questioned documents that Lock looked at were photocopies of faxed documents.

“Ruling: Overruled. Defendant's objections go to the weight, not admissibility, of the evidence.”

COMMENTARY: A routine case of admissibility via the long route of an *in limine* hearing. See appeal decision in the case *U.S. v Elder; U.S. v Solomon*; 682 F.3d 1065 (8 Cir. 2012), which is discussed very briefly herein.

112. *U.S. v Umana*, No. 3:08CR134-RJC (U.S. DC W.D. NC 2010)

The court held a hearing on Defendant's objection to admission of certain documents. Letters coming into county prison had been intercepted and copies sent to handwriting expert Jeffrey Taylor.

“Taylor credibly testified that he compared these specimens and determined they were of common authorship, except for the final two lines of Exhibit 169, which were written in a different handwriting style that Taylor could not analyze.

“Taylor then compared the handwriting found in the known specimens to the handwriting found in the other confiscated letters (the ‘questioned documents’). For each of the questioned documents, he found a ‘strong probability’ or a ‘virtual certainty’ that they were authored by the defendant.[1] Where Taylor could not opine to a ‘certainty,’ it was only due to the fact that he analyzed a copy of the letter rather than the original.”

There is explanation why some letters were not admitted into evidence and why most were, and the applicable rules for authenticating documents for admissibility.

COMMENTARY: Taylor seems to have properly qualified his opinions to fit each document, occasionally serving the interests of the defense.

2011

113. *American Family Life Assurance Company of Columbus v Biles, et al.*, Civil Action No. 3:10CV667TSL-FKB. (US Dist. Ct. S.D. MS 2011)

The report begins: “In its September 8, 2011 memorandum opinion and order in this cause, this court denied motions by defendants to dismiss, for Rule 56(f) discovery, and for leave to file a counterclaim and third-party complaint, and the court denied a motion by defendant Michael Lockwood to dismiss. The court reserved ruling on the motion by plaintiff American Family Life Assurance Corporation (AFLAC) for summary judgment and on AFLAC's motion to strike the affidavits of defendants' handwriting

expert, Robert Foley, pending a *Daubert* hearing. Subsequent to entry of the court's opinion, defendants moved for reconsideration, and they separately moved to strike the affidavit and exclude the testimony of AFLAC's expert forensic document examiner William Flynn, and for a *Daubert* hearing on the admissibility of Flynn's opinions. On October 28, the court conducted a *Daubert* hearing on each side's challenge to the other's expert's opinion. Having now considered the memoranda of authorities and accompanying attachments submitted in support of the motions to strike and/or exclude, along with the testimony at the *Daubert* hearing, the court concludes that defendants' motion to strike Mr. Flynn's affidavit and exclude his opinions is not well taken and should be denied, and that the opinions expressed in Mr. Foley's affidavits are not reliable and should be stricken."

Among other factors considered was that Flynn had the original data from the electronic signature in question to work with while Foley did not. However, lest anyone think the decision was critical of Foley, Footnote 3 reads: "The court reiterates that Mr. Foley is obviously highly qualified in his field, and would further note that it appreciates his forthrightness in his testimony before the court."

COMMENTARY: This case is an object lesson to all handwriting experts either to learn thoroughly modern methods of capturing handwritten items or to decline to address them. On the other hand, I believe this case shows the inadequacy of the explanations of and bases for the ASTM terminology for expressing levels of opinion in document examination. Foley explained that "probably" meant "possibly" and that he wanted more and better materials. Specifically he dissociated the term "probable" from the meaning of "more likely than not." Logically, his opinion became a non-opinion, not merely a qualified one.

114. *Beckett v Kyler, et al.*, Civil No. 1:CV-03-1716. (US Dist. Ct. MD PA 2011)

Beckett filed a motion for extraordinary relief and for a certificate of appealability that had been denied previously. He claimed a letter showing a witness against him had a deal with the D.A. had been kept from him by the prosecutor. However, the letter needed authentication so Beckett asked for a document examiner. The court appointed Hartford Kittel who said the letter was not authentic. Beckett asked time to find another expert, and he found Carolyn Kurtz who agreed with Kittel. Beckett then asked time to find a third expert, but time ran out on him to do so. The case report ends:

"In accordance with the accompanying memorandum, IT IS HEREBY ORDERED THAT the motion for extraordinary relief (doc. 106) is dismissed. This court continues to decline to issue a certificate of appealability."

COMMENTARY: Although no expert testimony was had, I include this case report because it shows how difficult it can be to find a hireling among handwriting experts. I submit that one needs lots of time, lots of money and a good idea where to ask first. I was told that one training course tells students always to agree with the client, no matter what, an instruction I never came across otherwise, but I have it only on hearsay.

Ms. Kurtz is a member of NADE.

115. *Boomj.com, et al., v Pursglove, et al.*, Case No. 2:08-CV-00496-KJD-RJJ. (US DC D NV 2011)

Drew Max, proffered by defendants as a handwriting expert, was ruled fully qualified and reliable after an *in limine* challenge. His report fully satisfied the requirements of Rule 26(a)(B)(2).

COMMENTARY: The challenges offered were proper fodder for cross-examination at trial. It is suggested that an expert's report explicitly state how it is satisfying each requirement of law or rule. To do so, the expert must study what applicable guides in law or rule state and must keep abreast of any changes. This is only one instance of the deplorable malservice offered to document examiners by those insisting self-study is inadequate, while it is far more essential than any original study under even the most awesome of teachers. Since knowledge and technology in any living field of endeavor continually grow, anything less than continual self-study will only assure an ever growing ignorance and foolishness.

116. *Carla M. v Susan E., et al.*, No. H035781 (Ct. App. CA 6 Dist. 2011)

"Appellant Carla M. brought a fraud action against respondents Susan E. and D. P. in which she sought to rescind respondents' adoption of P. P. and to reestablish appellant's parental rights. Following appellant's presentation of her case, the trial court granted respondents' motion for judgment (Code Civ. Proc., §§ 631.8)." But not all of Appellant's desired evidence was admissible, as stated later:

"Appellant offered into evidence a note written by D. This note, which was not sent to anyone, stated respondents 'perception' that appellant was 'not happy with [the] current relationship,' the details of the '[c]ontact plan — [a]lternating yearly visits, photos twice, and calls to plan visits . . . and emails concerning major life events,' and the '[r]easons for this arrangement — [¶¶] reaction to past attempts at giving parenting advice; [¶¶] not comfortable with role as consultant[;] [¶¶] had not achieved a balanced relationship.' The note is dated July 12, 2005. Respondents' motion *in limine* sought to exclude the testimony of Erich Speckin, who would testify that this note was written within the last three years. Respondents' position was that the note was written in 2005. In their motion, respondents stated that the parties had stipulated that there would be no expert witnesses at trial, and they argued that 'given the nature of the case, and the questionable nature of the science potentially relied upon by [appellant's] previously disclosed expert, any expert testimony . . . would cause more delay and cost, use of court and attorney time, etc., than its probative value would justify.' Appellant disputed that there had been any stipulation regarding expert witnesses, and she argued that respondents had falsified evidence. The trial court granted the motion to prohibit expert testimony."

COMMENTARY: It is not stated how Speckin had arrived at his opinion, such as

handwriting expertise or ink examination, or maybe one of his other admirable skills, as in *Adrian v Lafler*, among the 2004 Federal District Court cases discussed herein.

117. *Chopourian v Catholic Healthcare West, et al.*, Civ. No. S-09-2972 KJM KJN (U.S. DC E.D. CA 2011)

In hearing arguments by the parties regarding their motions *in limine*, one ruling was this:

“E. Plaintiff's Motion *In Limine* Five (ECF No. 108)

“Plaintiff seeks to exclude the testimony of David Moore, a forensic document examiner, who reviewed plaintiff's journals and drew several conclusions about the entries. Because the court does not have sufficient information to determine whether Moore's testimony addresses those portions of the journals the court finds relevant, see pages 12-13 below, the court grants the motion without prejudice to defendant's right to offer Moore as a witness, after alerting court and counsel in sufficient time to allow for voir dire outside the jury's presence.”

COMMENTARY: As of February 01, 2015, Google Advanced Scholar has seven other case reports for this suit, but none addressed this issue. I include it in case someone might wish to follow up on it later.

118. *Diggs v Burge*, No. 07-CV-6240(VEB). (US Dist. Ct. WD NY 2011)

COMMENTARY: This was a hearing for a petition of *habeas corpus* which was denied. In the underlying criminal trial, James Beikirch of the Monroe County Sheriff's Office had testified that Diggs' handwriting was not on a store receipt offered to support an alibi. Beikirch is a member of NADE.

119. *U.S. v Tarantino*, No. 08-CR-655 (JS). (United States District Court, E.D. New York. March 23, 2011)

Reviewing the evidence and law submitted in the defense's *Daubert* motion to preclude the Government's handwriting expert, the court stated: “Accordingly, the Defendant's request to preclude the Government's handwriting expert is denied, subject to further *voir dire* at trial of the expert's qualifications and methodologies.”

COMMENTARY: A case of routine admissibility after a routine challenge, and rapidly becoming as routinely unimaginative as it is repetitive. If defense attorneys and their advisers would either learn what the expertise is about and should be about or consult with a genuine handwriting expert, they might garner a modest measure of success and save taxpayers significant costs in doing so.

2012

120. *Brown v Jones*, Case No. 08-CV-648-GKF-TLW. (US Dist. Ct. ND OK 2012)

COMMENTARY: In a petition by Brown for *habeas corpus*, the court reviewed

the evidence at his trial which included handwriting identification: “They heard the document examiner for the Tulsa Police Department testify that it was highly probable that the author of the note used to effect the bank robbery was the writer of the known writing sample. Id. at 242. The known writing sample was Petitioner’s job application.”

121. *Ceglia v Zuckerberg*, Civil Action No. 1:10-cv-00569-RJA, Decision and Order denying Defendants’ Motion for Production (US D.C., WD NY, Nov. 20, 2012)

Defendant motion for discovery denied. It gives at least suggestion that Larry Stewart was maybe mistaken on what he did. As in the Martha Stewart trial, he stated under oath that he did work he did not do. Gerald M. LaPorte and Albert H. Lyter, III, were hired by defense, and Larry Stewart and Erich Speckin were hired by plaintiff.

COMMENTARY: Some cases give the appearance of a forensic feeding frenzy.

122. *Danove v Davila, et al.*, Civil Action No. 11-3173. (US DC E.D. LA 2012)

Danove sued her employer for sexual harassment. The employer claimed the suit had to go to arbitration by company policy and because of the employee’s agreement when first hired. Danove denied having signed such an agreement or having signed for receipt of the employee handbook stating the policy. The employer offered, and the court accepted, Cynthia Rogers as a handwriting expert. Danove likewise offered a handwriting expert, Mary Ann Sherry, whom the court accepted.

Sherry said the copy of the one disputed signature she was asked to examine was insufficient so that it allowed only an inconclusive opinion. Rogers, on the contrary, said copies of both disputed signatures were sufficient for her to conclude they were genuine, though she preferred using originals. Considering all the evidence, Danove did not prove her signatures false, so the court ordered the dispute to go to arbitration.

COMMENTARY: Rogers’ assurance weighed heavier with the court than Sherry’s caution, which seems to be some kind of unwritten rule. This approach can distort what the witnesses truly intend to say. Please bear in mind that the following remarks are not evaluations of the Danove case but are general considerations. One who is opinionated and only considers one’s own opinion is always far more assured than one whose opinion considers multiple factors. If the fact finder is not laboring over finding facts but only weighing self-assurance of opposing witnesses, the inherent caution and thoroughness of the genuine scientist will always be at a disadvantage. At the same time, one needs to consider whether caution is only uninformed timidity and the seemingly opinionated witness is only the excessively zealous proclaimer of the truth. This quandary is another reason why we who are witnesses have a much easier burden than the fact finder.

123. *Primerica Life Insurance Company v Atkinson, et al.*, Case No. 11-cv-05299-RBL. (DC WD WA 2012)

Primerica had James Green as handwriting expert, who said defendant’s experts were unqualified. Defendants had Wendy Carlson and Curtis Baggett. *Brown v*

Primerica, which is discussed herein, also had Baggett as Primerica’s opposing handwriting expert. The dispute was whether there was a triable issue regarding forgery of signatures on an insurance policy. The court resolved the matter by stating:

“Next, Allred argues that Baggett’s Letter of Opinion should be excluded because it is based on insufficient data, fails to identify any process or methodology utilized to reach the conclusion, and fails to provide any reasoning for concluding that Allred forged the signature. Atkinson responds by defending Baggett’s credentials and methodology. As Carlson’s testimony is enough to survive summary judgment, the Court does not need to determine the admissibility of Baggett’s testimony. To the extent that his Letter of Opinion is his ultimate testimony, it is nothing more than *ipse dixit*—an assertion without proof. Assuming that Baggett is a qualified expert and uses reliable methodology, his Letter of Opinion provides no facts, reasoning, or analysis. He states, ‘Carolyn Allred did indeed forge the signature of Christopher Ryan and authored the handwriting on the questioned documents.’ But he does not offer any basis for arriving at that conclusion.”

The court pointedly rejects one argument often used to “prove” that some handwriting experts are unqualified: “Allred points to Carlson’s lack of membership in the American Board of Forensic Document Examiners (ABFDE) and to the ‘questionable qualifications’ of Baggett.

“As Atkinson argues, the ABFDE does not have a monopoly on who can and cannot be an expert in federal court. Under Rule 702, an expert can qualify through either knowledge, skill, experience, training, or education.”

See also *Prudential Ins. Co. v Allred and Atkinson; Primerica Life Ins Co. v Allred and Atkinson*; Case No. C11-5299RBL (US DC W.D. WA 2013).

COMMENTARY: Carlson was one of Baggett’s students. One of her qualifying experiences was that she had given a talk at a high school.

124. *Salazar v A&J Construction of Montana, Inc.*, No. CV 11-16-BLG-CSO. (US DC D. MT 2012)

Motion to strike report and testimony of Salazar’s handwriting expert, Wendy Carlson, was denied since the report’s deficiency and disclosure were corrected and completed in time.

COMMENTARY: Either Carlson did not know what the rules required of her or she was improperly instructed. In response to the motion to exclude, all deficiencies were sufficiently repaired.

125. *Santiago v Evans, et al.*, Case No. 6:12-cv-577-Orl-22DAB. (US D.C. MD FL 2012)

By a signed agreement defendants purchased a boat from plaintiff and sold it to a third party. Plaintiff testified he did not sign the agreement, which the court found not credible. Thomas Vastrick, certified by ABFDE, testified that plaintiff had signed the agreement. Based on law, the court found the agreement void and that plaintiff still owned the boat.

COMMENTARY: It seems defendants won everything but the boat.

126. *U.S. v Durante*, Criminal Action No. 11-277 (SRC) (United States District Court, D. New Jersey, April 12, 2012)

Motion to exclude handwriting expert, John Sang, is denied without prejudice.

COMMENTARY: In a brief and well written decision the trial court explained why a hearing on the motion was not required:

“Defendant contends that John Sang should be precluded from testifying at trial as a handwriting expert on *Daubert* grounds. This Court agrees with Defendant to the limited extent that Federal Rule of Evidence 702 requires the Court to act as gatekeeper and determine whether an expert’s testimony may be admitted. Defendant points to no authority for the proposition, however, that either *Daubert* or Rule 702 require a pretrial hearing to make this determination. To the contrary, as the Second Circuit has observed, ‘[w]hile the gatekeeping function requires the district court to ascertain the reliability of [the expert’s] methodology, it does not necessarily require that a separate hearing be held in order to do so.’ *United States v. Williams*, 506 F.3d 151, 161 (2d Cir. 2007).”

The *Kumho* case is quoted in support, and a Ninth Circuit case is cited to the effect that a special hearing need not be held. *United States v. Alatorre*, 222 F.3d 1098, 1102 (9th Cir. Cal. 2000). Lest we handwriting experts become complacent, the court then says:

“On the other hand, this Court does not agree with the Government’s suggestion that the field of forensic handwriting analysis is so well-established that no Rule 702 inquiry into reliability is necessary. This Court exercises its discretion under the Federal Rules of Evidence and *Kumho* and will fulfill its gatekeeping obligations and consider any challenges to the admissibility of John Sang’s expert testimony at trial.”

127. *U.S. v Revels*, No. 1:10-CR-110-1 (United States District Court, E.D. Tennessee, Chattanooga Division. May 9, 2012)

Curtis Baggett was disqualified from testifying at sentencing hearing on behalf of defendant. This seems to be the most thorough of the court critiques of his qualifications and lack of truthfulness in testimony.

Defendant was not permitted continuance to retain Grant Sperry or Tom Vastrick, since there had been sufficient time to explore Baggett’s questionable qualifications and there had already been a continuance.

COMMENTARY: The court expressed its concerns with the benefit to defendant and, in what must have been a display of a dry sense of humor, included an understated estimate of Sperry’s qualifications over Baggett’s:

“The Court is also concerned with the degree to which Mr. Sperry’s testimony will be favorable to Defendant. Defendant has worked quickly over the past few weeks to obtain a report from Mr. Sperry for the Court to consider in conjunction with the pending motions, and Mr. Sperry’s qualifications do appear to far exceed those of Mr. Baggett.

The Court also recognizes that Defendant has raised a novel argument regarding whether Defendant penned the electronic signatures at issue and no other opinion testimony has been offered in support of this theory. With that said, it is less than clear that Mr. Sperry's testimony will be favorable to Defendant, which is a primary consideration for the Court in determining whether or not a continuance should be granted."

Wendy Carlson had peer reviewed his work and agreed, but that was no help to his client.

128. *U.S. v Rogers*, Case No. 11-20749 (US Dist.Ct. E.D. Michigan 2012)

Defendant made motion *in limine* to exclude handwriting, fingerprint and mortgage fraud expert testimony. The Government replied that it would call no expert but rely on testimony of FBI agents regarding their investigations. Motion denied as moot.

COMMENTARY: I include this case as typical of all cases where one side made a motion to exclude the opposing expert(s), and the opposing side responded with intention to call none. In any particular case, did they never intend offering an expert or did they back down in face of an intimidating challenge? Someone far wiser and more knowledgeable than I would have to answer that; so in the meantime list such cases in your preferred column.

129. *U.S. v Sadler, et. al.*, Case No. 1:10-CR-098 (U.S. DC S.D. OH 2012)

Nancy and Lester were on trial together for drug violations. Presumably they were husband and wife though the case report does not tell us. Nancy is the main focus of this decision regarding their post-conviction motion for acquittal.

"She cites the testimony of her handwriting analyst, David Hall, who opined that some documents sent to GIV were written by Gidget Coleman, not by Nancy Sadler. And she relies on bank records introduced at trial, showing that she was at an Indiana casino on many of the dates that drug orders were placed, making it impossible for her to have physically signed or approved orders on those dates."

COMMENTARY: This case of routine admissibility sets forth reasoning by the trial court why the handwriting expert's testimony does not prove some contentions by defendants. However, the expert must have done well since, out of 29 counts, they were acquitted in counts 3-26 "each of which alleged distribution of controlled substances on specific dates...."

130. *Whitehorn v Dormire*, No. 4:09CV00881 AGF (U.S. DC E.D. MO 2012)

This was a *habeas corpus* hearing in which petitioner did not prevail, but had alternative means of relief set forth for him. He presented a letter allegedly exonerating him from the rape he had been convicted of. His handwriting expert testified he had not written it but could not say who did:

"Petitioner also called Stephen McKasson [also spelled 'Steven McCassin' in some portions of the record], an expert in the field of document examination. McKasson

compared the letter allegedly written by Ms. Johnson with writing samples from Petitioner and concluded that Petitioner had not written the letter. McKasson further testified that the letter was naturally written and the handwriting was not disguised. However, McKasson was unable to determine if Ms. Johnson wrote the letter because Petitioner did not provide McKasson with a sample of Ms. Johnson's handwriting.”

COMMENTARY: “Naturally written” vs. “unnatural” comes up often in opinions of alleged experts too inexperienced to tell you either the nature complied with or the one violated.

2013

131. *Abebe v U.S.*, Criminal No. 3:09-00251-MBS (US DC D. SC 2013)

COMMENTARY: Abebe, whose full name is Unula Boo Shawn Abebe, moved in pro per to have his sentence for threatening the life of the President set aside. One error he relied on was the failure to disclose the identity of handwriting expert witness, Jennifer Kessel, until right before trial. The motion was denied with prejudice.

132. *Addison v Rader*, Civil Action No. 12-0977 (US DC E.D. LA 2013)

“Also after the incident, Rush received several handwritten letters from defendant dated May of 2006. In those letters, defendant apologized and expressed remorse for what happened on the night of the incident. He indicated that the incident was a ‘drug event’ that would never be repeated, and he admitted that she almost died because of his actions ‘on that drug.’ He asked her to get him out of jail, and he talked about the money she had received in a settlement. He noted that she would not have to testify against him if she married him.

“Robert Foley, an expert forensic document examiner, compared the letters Rush received from defendant to defendant's handwriting sample and concluded that defendant wrote the letters to Rush.”

COMMENTARY: One might be tempted to think the lady was unappreciative of Addison’s noble romantic overtures, until one understands what the event was. He physically assaulted the woman and stabbed her, asserting in self-defense that it was all her fault for pulling a knife on him and resisting his heroic efforts to save her from her untoward actions.

133. *Allstate Insurance Co., et al., v Community Health Center, Inc., et al.*, Civil Action No. 08-810, *in limine* rulings (US DC M.D. LA 2013); bench trial, Civil Action No. 08-810, Section "C" (5) (US DC M.D. LA 2014)

In limine Rulings:

“3. The defendants' motions *in limine* to exclude the testimony of the plaintiffs’ experts on handwriting, physiatry [sic], physical therapy, and chiropractic therapy are DENIED.”

COMMENTARY: Nothing further specific is said of the handwriting expert.
Bench Trial:

Both sides lose and each wins in so far as the other loses. Allstate had Robert Foley testify to forged and false documents, but claims on them were time barred. The decision describes how Allstate had "actual or constructive knowledge of facts indicating to a reasonable person he or she is the victim of a tort." Other than Foley's expert findings, the court sets forth evidence of false documentation the discovery of which did not require one to be an expert document examiner.

COMMENTARY: Some facts were raised during the lengthy time Allstate was settling claims with Community, and these facts should have alerted Allstate to possible fraud regarding claimed dates of treatments when the clinic was closed, use of prescription pads by other than the licenced physician, verbatim wording in different patient records, photocopied forms with only the date newly written, "wildly inconsistent signatures within the same file, and, among much else, use of a stamp for a physician's signature."

134. *Amusement Industry, Inc. dba Westland Industries; and Practical Finance Co., Inc., v Stern, et al.*, No. 07 Civ. 11586 (LAK) (GWG). (US DC S.D. NY 2013)

COMMENTARY: A document examiner supported a party's testimony that his signature on key documents had not been written by himself.

135. *Carter v Chappell*, Case No. 06cv1343 BEN (KSC)

The decision on a *habeas* petition comes to 218 pages in the pdf version, which gives an idea what a relatively small part the document examination played in the case.

"Sandra Homewood, a document examiner with the San Diego District Attorney's office, examined a number of writing samples from individuals involved in the case, and testified that Petitioner was the primary author of the entries in the address book found in his possession at the time of his arrest. (RT 4442-80.) Homewood opined that Petitioner made the entries in the address book corresponding to the names Catherine Tiner, Janette Cullins, and Susan Knoll, and while the sample was limited, Petitioner's handwriting was also consistent with the entry made regarding Polly Haisha. (RT 4480-85.) With respect to the business cards found in Petitioner's possession, Homewood stated that Petitioner also wrote the name Jan Cullins, the phone number, and the Tiner entry on that card. (RT 4485-98.) Homewood also compared Petitioner's writing to the Shylas note, but that document was limited for identification purposes and she was not able to identify or eliminate him as its author, noting that Janette Cullins' handwriting was more consistent with the writing. (Id.)"

COMMENTARY: The admissibility was routine but the amount and quality of work was above routine.

136. *Chopra v Attorney General of California*, No. C 09-0841 JSW (PR) (US DC N.D. CA 2013)

In a hearing for writ of *habeas corpus*, which was denied, a handwriting expert testified for the Attorney General:

“Petitioner claims that counsel failed to object to the prosecution's handwriting expert or to call an expert of his own. Counsel conducted an extensive cross-examination of the expert, however, and Petitioner does not identify any different findings or testimony that another expert would have given. Petitioner complains that the expert relied on photocopies of signatures, but there is no evidence that adequate handwriting analysis cannot be performed from such copies.”

COMMENTARY: That there is no evidence that adequate handwriting analysis cannot be performed from photocopies is or is not correct depending on the quality of the copies and the degree of assurance the expert must arrive at. Since nothing else is given about the analysis in this case, we can only assume all was adequate for the required level of proof.

137. *Helton, et al., v American General Life Insurance Co., et al.*, Civil Action No. 4:09-CV-00118-JHM (US DC W.D. KY 2013)

Defendants moved to exclude the testimony and opinion of Emily J. Will. The arguments regarding her lack of qualifications make interesting reading as do the counter arguments. The court granted the motion, but only because all but one of the signatures Plaintiff had her opinion on were not at issue, and the authenticity of the remaining one was irrelevant to any issue in the case.

COMMENTARY: The case report notes that Will is certified both by NADE and BFDE.

138. *Oyarzo and Hart v Tuolumne Fire District, et al.*, Case No. 1:11-cv-01271-SAB (U.S. DC E.D. CA 2013)

Defendants moved to exclude testimony by David S. Moore since it related to Plaintiff's claim of retaliation. Since the claim had already been excluded, the testimony was irrelevant, and additionally there was the danger of confusing the issues and misleading the jury. If it became relevant later, a motion for reconsideration could be brought outside the presence of the jury.

COMMENTARY: I remember one occasion when an attorney pursued an irrelevant line of cross-examination. For the life of me, I could not follow his explanations why there was any but a very dull and rusty point to the pursuit.

139. *Padre Enters., Inc., v Rhea*, Case No. 4:11CV674 (U.S. DC E.D. TX 2013)

“In the motions, Plaintiffs ask the Court to strike the expert opinions of William C. Berry and Wendy Carlson.” Berry, economics expert on profit and loss, was struck. Carlson was not since handwriting is “sufficiently reliable,” but her testimony was not

without challenge.

COMMENTARY: In weathering challenges to her admissibility, she has more than the proverbial nine lives of the legendary feline.

140. *Prudential Ins. Co. v Allred and Atkinson; Primerica Life Ins Co. v Allred and Atkinson*; Case No. C11-5299RBL (US DC W.D. WA 2013)

James Green was handwriting expert for Defendants, while Wendy Carlson was the opposing expert. Green said that signatures on a change of beneficiary form an insurance policy were probably genuine, while Carlson said she was absolutely sure they were forged. They also disagreed on the import of a significant difference. Green said: “One difference, or even a significant difference, is insufficient to eliminate a writer of a signature.” As for Carlson: “She testified that one ‘significant difference’, as that term is defined in the ASTM, is sufficient to disqualify a signature as genuine.” She further stated: “Her opinion regarding Jerry Atkinson's signature was based upon a review of the change of beneficiary form (Exhibit C), one photo copied signature on a legal pleading and five checks, all bank provided copies. She did no independent examination of Ryan's or Goodner's signatures but relied on an examination of one of her co-workers.”

See also *Primerica Life Insurance Company v Atkinson, et al.*, Case No. 11-cv-05299-RBL. (DC WD WA 2012).

COMMENTARY: On the matter of a significant difference, the two were incorrect in opposite directions. A finding of authenticity may not be made if there be a single unexplained significant difference. A significant difference of sufficient cogency compels a finding of falsity. As to Carlson's methodology of relying on another examiner's opinion as the basis of her own, this gives support to the suspicion that her career as a document examiner is as charmed as it is uninformed. This unreliable reliance ought to have had her disqualified. Green was found to be more credible, while, given his misunderstanding of the import of a significant difference, the court might better have said he was found less not credible.

141. *Rodriguez and Rodriguez v U.S. Bank, N.A.*, Civil Action No. SA-12-CV-345-XR (US DC W.D. TX 2013)

The plaintiffs responded to the bank's motion for summary judgment with an affidavit by Curtis Baggett. As a matter of law Baggett's affidavit had to be stricken as having been filed too late without a justifying reason. The court could have left it there, but went on to say: “Second, the affidavit is inadmissible as evidence.” Detailed explanation is given why this is so and serves as an excellent example of critical and objective evaluation of an expert's affidavit. For that reason alone I include the case though no testimony was involved.

COMMENTARY: I take the second reason as being a ruling that Baggett would be inadmissible as an expert at trial, knowing someone could reasonably argue some alternative interpretation. The reader might check the index of experts and review all

cases recounting admissibility troubles for Curtis Baggett, noticing the almost routine repetition of the same causes for the same rulings of inadequacy in affidavits and inadmissibility at trial. Did he fail to learn what needs to be included in a report or affidavit or has he not learned how to develop what is needed? And what along these lines does he teach students who trust him to teach them well?

Mr. Baggett is living evidence why the proposed reforms for the admissibility of forensic evidence will only give an illusion of reform but a reality of ever more clever trickery in disguising unreliability and in the practice of the hireling as worthy of credence. For a number of years Mr. Baggett has merited more disqualification and discountenance of his competence by courts of law than any other document examiner I know of. Yet attorneys keep using him, while opposing attorneys keep failing to discover the plethora of case reports that are fine material for impeachment. New rules will only provide more opportunity for clever experts to create ever newer and better pretenses, while currently inadequate cross-examiners will only have new tools to be inadequate in employing. But if one believes in magic of any kind, then one will continue to propose new rules with a new bureaucracy to enforce them as the cure-all for questionable forensics.

142. *Routh and Routh v Bank of America*, No. SA-12-CV-244-XR (US DC W.D. TX 2013)

The conclusion of the decision reads: “Defendant's Motion to Exclude Plaintiffs' Experts (Doe. No. 38) is GRANTED in part in so far as the motion seeks to exclude Curt Baggett as an expert witness and in so far as the motion seeks to exclude Ezequiel Martinez's opinion as to the authenticity of the Assignment. All other relief requested in Defendant's motion to exclude is dismissed as moot.

“Defendant's Supplemental Motion for Summary Judgment (Doe. No. 34) is GRANTED.”

COMMENTARY: There is an extended explanation why as a matter both of fact, as to Baggett’s most inadequate “report,” and of law that he had to be excluded. Typically, he and “document examiners” that he and his son trained issue a conclusory statement that is notarized, as if a notary’s stamp and signature gives substance to an insubstantial agreement with the claim of one’s client. I issued a report in one case demonstrating false notary signatures on such notarizations, allegedly by a James C. Cargile, so one should verify any coming from the same sources.

143. *U.S. v Agopian, et al.*, Civil Action No. 3:11, Order (U.S. DC TX N.D. 2013)

Agopian formed two businesses to defraud Medicare. Since she was barred from being a Medicare provider, she used forged signatures of her husband, Defendant Smbatyan, on applications to start one of the businesses. Having been convicted, Smbatyan moved for acquittal, which was granted. Linda James had testified at trial that the signatures in question probably had not been written by him. This with other evidence

should raise a doubt in the mind of a reasonable person. Further, his passport, that was held by the Government during trial, showed he was out of the country at times when several disputed signatures were dated.

COMMENTARY: The court order describes yeoman work by James who is a certified and diplomate member of NADE. The Government presented no handwriting expert of its own. The order reproduces a genuine signature by Smbatyan and three false ones.

144. *U.S. v Johnsted*, Order (U.S. DC WD WI 2013)

The case report ends: “IT IS ORDERED that the testimony and report of government witness Gale Bolsover are EXCLUDED.” Thus defendant’s motion to exclude the evidence was granted.

COMMENTARY: Read the entire report for a summary of the muddled thinking that arises from the muddled definitions of “handwriting” and “handprinting” and their associated terms, “cursive” and “printed.” I highly recommend one skip the rest of this commentary if one is overly sensitive to rationality.

“To handwrite” means engaging in the activity of writing anything by hand. However, not everything that is handwritten is considered to be handwriting by many handwriting experts. Now, “handwriting” has two meanings. First, as in “I am handwriting this message to you,” it means actively and currently engaged in the task of writing by hand. Second, it means the end product of the activity of writing by hand, the handwritten product of the activity indicated by the infinitive “to handwrite.” So far so good. Now, let us consider a perplexity that passes as wisdom among many handwriting experts and is a burden to those that must suffer and decipher their, at best, passable wisdom.

If what is written by hand is a style of letters known as printing, it was indeed written by hand but it is not considered to be handwriting, but to be handprinting. I will assume the reader is perspicacious enough to recognize all intellectual atrocities in the terminology presently rampant among most handwriting experts, but more as a mental contagion than an intellectual accomplishment. Just this once I will point out that, if the experts are going to consider that printed letters written by hand are not handwriting, then they must require that all printed letters be written by some organ other than the hand so that it not be handwriting, whose meaning includes the activity of writing the printed letters by hand or the work product resulting from having written such by hand.

Let us consider the considerable and related perplexity when some handwriting experts define handwritten “cursive writing” and handwritten “printed writing.” They say the term “cursive” means the letters are connected, while they say the term “handprinted” means the letters are not connected. However, “cursive” etymologically and for most of its life as a useful word meant moving quickly. There is history about the development of handwriting that explains how rounded and fast writing developed and how the word “cursive” was adopted. Basically, when pens and writing surfaces permitted rounded

forms versus only angles and straight lines, writers could move faster. Thus cursive writing was fast writing characterized by rounded forms and continuity, whether or not the writer connected the letters. Many modern handwriting experts, not being able to distinguish continuity from discontinuity in the writing movement, and not understanding that both letters based on the original Roman capital letters and letters based on uncial letters, and more immediately on the Humanistic style of letters, can both be either connected or disconnected.

Thus their definition of printed writing being disconnected letters forces them to say that letters in printed style when connected are no longer letters in printed style, while their definition of cursive writing being connected letters forces them to say that disconnected letters that are quickly and fluently executed with excellent continuity and rounded forms are printed letters, though having no quality of the printing style itself. To further the expertise of their misperceptions and perplexities, they assert that cursive and printed writing cannot be compared to each other. They have yet to realize that, if challenged on this theory, they must assert the differences, which they perceive between the two alleged incomparable styles and which make them incomparable, are based on having compared the two styles of writing. In discussion of the definition of “not comparable” in ASTM Sub-committee E30.02 no one seemed phased by this bit of self-contradiction.

A final point about the irrationality of the matter. When they are called to examine writing by one such as myself, their theory logically asserts they may not compare anything I wrote to anything else I wrote since I both connect and disconnect, even in the same word of any length and sometimes in rather short words, though never in the words “a” and “I.” Two central disabilities one must then recognize, but only if one is hampered by being logical. The first is that a particular handwritten item by one like myself cannot possibly be compared to itself, nor some samples of it to other samples of it, since even in the same word some are allegedly cursive, connected, and some are allegedly printed, disconnected. The second is that the two words “a” and “I” cannot be compared to any other words since they have neither connection nor disconnection among the letters constituting them. Funny how having only one of something prevents both disconnection and connection with its nonexistent fellows. Forgive me for pushing this further, but a word “a” or “I” cannot be compared to another “a” or “I” since the rule explicitly says compare connected letters only to connected letters and disconnected only to disconnected, but has no provision for comparing a word that cannot possibly have letters either connected to or disconnected from fellow letters in the word.

Why not one more tiny difficulty. Many handwriting experts will tell you they carefully note whether a suspect’s writing and the writing in question have same or dissimilar connections and disconnections. Thus comparing connections to disconnections lets them determine whether or not the same person wrote both or not. By one rule they must compare connections to disconnections to determine who wrote something while by another rule they cannot tell you anything at all other than that they

simply cannot tell you anything at all.

The only way out of this quandary and out of the perplexity exhibited in the order in the *Johnsted* case is to recognize that it is the human graphic motor sequence, giving us the rhythmical progression of the writing, which provides us with the individuality of the writing, whether we call it printed or cursive. Why? Unless two individuals have the very same body with the very same muscular, nervous, skeletal, and all other bodily systems (and it is the entirety of the body that is ultimately involved in writing!), they necessarily cannot produce the same graphic motor sequence. Whether a purported expert knows of these matters and can discern and explain them is quite another question. However, all these factors tell us that surveying handwriting experts to discover whether enough of them can get a test problem correct to permit us to pretend they are now all correct experts, is to live in a make-believe world of make-believe science. Provided one make a close and very critical assessment, it will be evident that too many have no science in their terminology and not much more in their theory.

145. *U.S. v Love*, Case No. 10cr2418-MMM (US DC S.D. CA 2013)

Love was accused of orchestrating a bombing for reasons too complicated to retell. One has to read the ins and outs of the man's thinking for oneself. His three colleagues said he was the mastermind. For one of the three, Love presented a signed declaration. At Love's request the court provided an expert to examine the declaration which the expert reported bore a cut-and-paste signature. Love obtained leave to represent himself when his attorney would not file a motion for a new trial. The reasons that he gave for not presenting the original of the declaration in court and for other facts adverse to him offer the reader a special experience in reading the case report. Among other pieces of evidence, the judge relied on the document examiner's report in finding the declaration to be false. Here is a sample of the judge's findings:

"Love also introduced a declaration from Johnathan Sanders to reinforce the authenticity of the Sanders declaration. The declaration, which recounts Johnathan Sanders's conversations with Love and other inmates, consists primarily of hearsay, and the crucial part of the affidavit is ambiguous hearsay: 'Love stated it was cool, because Ms. Sanders left/signed declaration.' (Dkt. No. 216 Exh. 1 at 2.) The statements in the affidavit are of minimal probative value because they largely report what Love himself told or showed Johnathan Sanders. See *United States v. Miller*, 874 F.2d 1255, 1274 (9th Cir. 1989) (describing defendant's hearsay statements made to federal agents and defense attorneys as 'too self-serving to have any significant probative value').

"After examining the Sanders declaration, the Johnathan Sanders declaration, the expert's report, and the other evidence and declarations offered by Love, the court concludes that Love has not demonstrated that the copy of the Sanders declaration that he submitted is authentic. To the contrary, the court finds that the evidence demonstrates that Sanders's signature is not authentic and represents is a 'cut-and-paste' job. Love did not produce the original document to the court.[4] The signature on the copy of the Sanders

declaration that Love did produce to the court is visibly cut off below the signature line, and the natural continuations of the letters visible above the signature line are absent below it — strongly supporting the validity of the expert's opinion that it is a 'cut-and-paste' document.”

More reasons for denying the motion for a new trial follow the above. Footnote [4] discusses documents Love claimed were mailed to the trial court but which the trial court never received.

COMMENTARY: I rarely include cases where the expert has not testified or there was no ruling on admissibility. This merits to be an exception because the judge did rely on the expert's findings and opinion, the chutzpah of Defendant, and the interesting twists and turns of Love's thinking. It is an example of what I call being clever but not smart.

146. *U.S. v Torres-Gonzalez*, Case No. 12-CR-4076-GPC (US DC S.D. CA 2013); affirmed, No. 14-50017 (9 Cir. 2015)

COMMENTARY: Defendant had been deported once, but signed a false name on a voluntary return to Mexico. When his fingerprints were run, his true name and legal status came up, and he was prosecuted. Nothing is said of the trial testimony of the handwriting expert, Susan Homewood, except that Defendant asserted it was error to let her do so.

147. *U.S. v Villaruel-Lopez*, Case No. 3:05-CR-00098-KI-4, Civil Case 3:13-CV-01018-KI (US DC D. OR 2013)

“During a search of co-conspirator Ricardo Mendoza-Morales' house, police found a memobook containing a drug ledger written in Spanish. The memobook was received into evidence without objection. The drug ledger referenced several of the co-conspirator's names, including defendant's nickname, ‘Guero.’ The government's handwriting expert from the Oregon State Crime Lab opined at trial that the drug ledger was written by Mendoza-Morales. Defendant's attorney cross-examined the expert, and called his own expert to challenge the procedure used by the government's expert. The government relied on the memobook to argue defendant's nickname in the drug ledger was just one more piece of evidence demonstrating defendant was involved in the charged conspiracy.”

Two paragraphs later: “On January 4, 2013, the Oregon State Police sent the government a letter (which was then provided to defendant's counsel) questioning whether the government's handwriting examiner was qualified to review a Spanish writing.

“Defendant filed this Section 2255 motion on June 17, 2013, claiming that the newly discovered evidence, in the form of OSP's letter questioning the expertise of the government's handwriting witness, should give me a reason to vacate or set aside his conviction.”

COMMENTARY: At first glance, one would think Defendant had every right to a

new trial. However, rules have a funny way of not considering everything that would be fair to a litigant, so that in this case newly discovered evidence the defense could never have discovered on its own prevails the defense nothing:

“The waiver’s language does permit defendant to challenge his conviction or sentence as allowed pursuant to Federal Rule of Criminal Procedure 33. See *United States v. Berry*, 624 F.3d 1031, 1039 (9th Cir. 2010) (‘A district court may treat a § 2255 motion as a Rule 33 motion for a new trial.’). However, under Rule 33, ‘[a]ny motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty.’ Fed. R. Crim. P. 33(b)(1). The jury returned its verdict of guilty on October 24, 2008. Defendant filed his motion on June 17, 2013. His motion is over a year and a half too late.”

148. *U.S. v White-Kinchion*, Case No. 11-40023-01-JTM (US DC D. KS 2013)

The report begins: “Following an extensive trial, the jury found Caela M. White-Kinchion guilty of twelve counts of health care benefit fraud, in violation of 18 U.S.C. § 1347, as well conspiracy to commit health care fraud, in violation of 18 U.S.C. § 371. White-Kinchion served as the chief nurse for ProActive Health Services, an entity specializing in providing home nursing services to clients in the Wichita area.” All post-trial motions by Defendant were denied. At trial, she was permitted to call a handwriting expert in rebuttal over objections by the Government.

COMMENTARY: As far as I can gather, the expert was permitted because a witness exceeded permissible testimony.

149. *Ziemba v Lynch, et al.*, No. 3:10cv717 (SRU) (U.S. DC D. CT 2013)

Two fraudulent documents were submitted by Ziemba in support of his suit against prison officials. Greg Kettering, document examiner for Defendants, gave impressive testimony why the signatures on the documents were copied from other documents. The court found credible Ziemba’s testimony that he was given the documents anonymously and thought they were genuine, nor did Defendants meet their burden of proof by clear and convincing evidence that he either forged them or knew they were forged. As a result, there were no sanctions against Ziemba, though everything in his case based on the documents was necessarily dismissed.

COMMENTARY: The details of what showed the documents to be false alert one to some of the features to look for in evaluating a document, touching on linguistics, handwriting examination, and investigation of a copy both as a copy and as a document in its own right.

Part of finding Ziemba credible in not knowing the documents were false was based on the circumstances of his incarceration which effectively prevented his having access to the necessary equipment with which to fabricate them himself. If one has an inexcusably suspicious mind and empathizes with Ziemba’s belief prison officials were conspiring against him, one would assume they had free access to the required equipment

and all the ingredients needed to create the false documents and could easily prey on his paranoia to accept a gift from modern non-Hellenistic Greeks.

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150. *Cabrera v U.S.*, Nos. 1:12CV695, 1:09CR323-1 (U.S. DC M.D. NC 2014)

Defendant alleged several instances of ineffective assistance of counsel at trial, one being not having raised argument that someone else made the forgery of which he was convicted. However, defense handwriting expert, Thomas Thornburg, testified that “it was improbable that Petitioner had signed Santiago's name to the fraudulent loan application....”

COMMENTARY: “Improbable” might not be an ideal term to express likelihood of a defendant not having written a false writing, since logically each of two contraries could both carry probabilities in its favor. One needs to demonstrate at the least how the probability of one’s own contention is decidedly in favor of one’s own position vis-a-vis the probability of the opponent’s position. As soon as we allow that our contention or opinion is less than definitely correct, we leave room for someone to argue that some probability is in favor of an alternative contention or opinion.

However, be careful of the illogical argument that, for example, since the evidence only supports a 65% probability for one party’s assertion that means there is a 35% probability for the contrary assertion. There may well be no evidence, and thus no probability, in favor of the contrary assertion. This is an application of the logical rule that a statement cannot be established by absence of evidence for its contrary. If it were otherwise, when at any point in an investigation insufficient evidence has been gathered to prove whether or not a suspect has committed a crime, then both assertions, he did commit it and he did not commit it, have been conclusively proven true since its contrary has not been established. This would also effectively close all cold cases in favor of the actual but unknown perpetrator.

151. *Censke v U.S.*, No. 2:14-cv-179, Criminal Case No. 2:08-cr-19 (U.S. DC W.D. MI 2014)

“An FBI handwriting expert, Peter Belcastro, examined Exhibits 1 through 4A and compared them to known handwriting samples from Censke. He testified that, in his opinion, Censke had prepared almost all of the writing on Exhibits 1 through 4A. Trial Tr. vol. III, 14-18, July 22, 2009. Belcastro could not offer an opinion as to who was responsible for the drawings included with the writings. *Id.* at 18.”

Saying, among other things, that Censke could not complain about ineffective assistance of counsel when he himself acted pro per, the trial judge stated at the end: “For the same reasons that the Court has dismissed this action, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24 that any appeal by petitioner from the Court's decision and the judgment would be frivolous and not taken in good faith.

Therefore, any application by Censke for leave to proceed in forma pauperis on appeal is hereby DENIED.”

COMMENTARY: Censke testified that he wrote some of the material but not all, and what he did write was incomplete and was only a joke about any threats. Neither judge nor jury found the joke amusing.

152. *Chavez v Mercantil Commercebank, N.A.*, Case No. 10-23244-CIV-TORRES (U.S. DC S.D. FL 2014)

The expert fact at issue was whether Chavez had signed a Payment Order. His document examiner was Charles L. Haywood, and the bank’s was Dianne C. Flores, a colleague of Linda Hart. The Court found that Chavez more likely than not had not signed the Payment Order.

COMMENTARY: The report above is extremely brief given the slightly more than four pages of the decision devoted to this matter. I cannot do justice to the excellent factual description of the expert testimony and closely reasoned decision by the Trial Court. Both experts are given fine reviews for their qualifications and testimony. The best encouragement I can offer to your reading the original case decision is to state how enlightening and educative I found it, and how inspired I am by the reported work product of both experts. The very intelligent reasons the Court gives for adopting Haywood’s opinion teach us a lot about what the quality of our own testimony should be. I have read many writings on how to testify and attended many presentations about it, and all of them are not as succinct and potentially fruitful as this judge’s rational decision can be for the attentive reader.

A tribute to the kind of gentleman Mr. Haywood is that he wrote a letter of recommendation for Ms. Flores when she was applying to a professional association, the association and purpose not being specified in the case decision.

153. *Clarke v U.S.*, Civil Action No. 1:12-cv-3607-JEC-JCF, Criminal Action No. 1:05-cr-371-JEC-JCF-1, Order (U.S. DC N.D. GA 2014)

“The Magistrate Judge also concluded that the results of the handwriting analysis performed after Movant’s trial were not so convincing as to establish his actual innocence in light of the other, substantial evidence of his guilt that was presented at his trial.”

COMMENTARY: Though there was no testimony at trial or at other hearing, I include this as an object lesson. If the handwriting analysis was of value to proving innocence after conviction, it surely was even more so before. I have come across a number of cases where handwriting evidence was used to close the proverbial corral gate after the horses of Defendant’s freedom had all escaped, and the courts declined to round them up. Additionally, neglect to present another piece of compelling evidence because of the piles you already have, might sabotage your entire case when opposing counsel adroitly argues the one thing that would have defeated his case was the one thing you avoided bringing in: Handwriting evidence that the love letters in modern French had not

been written by Julius Caesar to Queen Cleopatra.

Do not laugh too hard at the absurdity of my example, since a famous French mathematician who was a member of the French Academy purchased just such letters and insisted they were genuine. After all, the seller assured him they were. Evidential absurdities have won cases, and more than a little bit were absurdities masquerading as handwriting expertise.

154. *Ehlers v Lemke*, Case No. 13 CV 6911 (U.S. DC N.D. IL 2014)

“Ehlers' former girlfriend also provided testimony. She testified that Ehlers went to Freeport with Keene and Hoover around the time of the robbery. Finally, the State provided testimony from a handwriting expert. The handwriting expert testified that the handwriting of a person who registered at a motel in Freeport the night before the robbery was consistent with Ehlers' handwriting.” Ehlers was convicted of murder for which the jury gave the death sentence, which the judge reduced to life imprisonment. His petition to the Federal district court was dismissed in its entirety.

COMMENTARY: The only report I have found for the state proceedings had to do with an order to transport Ehlers for a *habeas corpus* hearing and to consult with his attorney. *People v Ehlers*, 703 N.E.2d 539, 301 Ill. App.3d 186, 234 Ill.Dec. 678 (IL App/2 Dist. 1998).

As for the brief note from the Federal case, let it be an object lesson to guys on choosing their girlfriends. There is one now and again who is not so blindly and devotedly stupid as to go to the wall for her man. In fact, I have found women mostly afflicted with being quite sensible, logical and terribly reality-focused.

155. *Hebert v Omega Protein, Inc., et al.*, Civil No. 1:13cv107-HSO-RHW (U.S. DC S.D. MS 2014)

Omega Protein filed a motion to exclude or limit the report and testimony of Hebert's document examiner, Thomas Vastrick. Omega Protein also filed a motion for summary judgment which was granted, so the motion regarding Vastrick was moot.

COMMENTARY: As dearly as we all would have liked to have had the ruling on the motion to exclude or limit, we are given another lesson in what seems to be a universal and eternal law with courts of law, though it seems often to be violated by the very same courts: Do not do work you do not need to do. Which makes me wonder whether I really need to keep issuing new editions of this text. Never mind; the deep-seated compulsion to do some kind of bibliographic research is incurable, however much disquiet it brings to one's life.

156. *Hidalgo v 3841 Hardware Inc., et al.*, No. 13-cv-6202 (AJN) (U.S. DC S.D. NY 2014)

In an action for back pay and liquidated damages, Defendants alleged Hidalgo had signed a release and received an agreed upon settlement of \$15,000. Hidalgo denied

having signed the release and receiving the \$15,000. Among other witnesses, “the Court received the testimony of...handwriting expert, Richard Picchiochi [for Plaintiff].... On behalf of Defendants, the Court received the testimony of...handwriting expert Robert Baier.” The experts offered inconclusive opinions, but Picchiochi said that Hidalgo’s alleged signature on the release was disguised, which the court took as evidence of genuineness. Defendants prevailed and the claim was dismissed.

COMMENTARY: I wonder whether Picchiochi meant to say, or did say and was misinterpreted, that the signature showed indications of falsity in general versus specifically of disguise. In any case, it is not recommended to solicit testimony from one’s own expert that only supports the opponent’s case. The trial judge mentions other and more compelling evidence in favor of Defendants, such as video of the settlement meeting, Plaintiff’s body language while testifying, and repeated warnings to him by the Court not to commit perjury. One item of evidence that I do not recall having seen in this type of case reports is a documented tracing of the alleged payment from one party’s possession to the other’s. A documented record of payment paid and received seems to me to be more compelling than any other evidence, and its absence would make me as a fact finder wonder wondrously about the claim of payment having been made.

157. *Ilyia v El Khoury*, Case No. C11-1593RSL (U.S. DC W.D. WA 2014)

Plaintiff moved for the exclusion of all three of Defendant’s experts.

“Plaintiff asserts that three of defendant’s experts should be precluded from testifying because they did not provide expert reports by the date specified in the case management order and because the testimony of Hannah McFarland is not relevant to any issue in the case.

“Although defendant has not provided a copy of the reports generated by Ms. McFarland and Matthew B. Ingalls, it appears that they were timely produced on November 7, 2012.”

The expert on evaluation of property would only be allowed to offer rebuttal testimony to Plaintiff’s expert evaluator without providing his own opinion on alternative valuations. However, although Plaintiff withdrew his allegation of forgery, McFarland’s testimony would still be relevant to Defendant’s counterclaim of defamation.

COMMENTARY: This is an example of how multiple avenues for disallowing the opposition’s expert evidence might be pursued. To consider only a claimed lack of scientific and/or legal reliability could well lead one to neglect another basis for what might have led to a sure win.

158. *Lugo, v U.S.*, No. 09-cv-00696-NG (U.S. DC E.D. NY 2014)

Lugo sent a letter to his brother relating an offer to murder someone for \$10,000 and a car.

“The government also introduced a tape-recorded conversation between Richard Lugo and his brother Robert Lugo discussing the letter. During the conversation, Robert

informed Richard that the government was seeking a handwriting sample to compare to the letter. Richard agreed with his brother that this posed a serious problem. At trial, a handwriting expert, Peter Tytell, testified that he had obtained handwriting exemplars from Lugo on two occasions to compare to the letter that Lugo had sent to Lorenzo. On the first occasion, Lugo wrote unusually slowly and refused to continue after writing three pages. Tytell testified that the handwriting exemplars he was able to obtain were not in ‘large measure’ Lugo’s natural handwriting, but that he nonetheless was able to conclude that there was very strong evidence that Lugo wrote the letter discussing the contract killing.”

COMMENTARY: In this compilation of cases, I at times observe that handwriting experts had much exemplar material and still had to have dictated samples because they desperately needed precise letters and words that matched the questioned writing. In this case there is no indication of preexisting writings, so I believe it is one of those instances where almost the only writing defendant does is criminal in nature. I have had cases where defense attorneys assured me defendant simply never wrote if possible not to. I am also sure Mr. Tytell did not say “very strong evidence,” but used terminology that is standard in the discipline.

159. *Nguyen v Miller-Stout*, Case No. C14-5202 BHS (U.S. DC W.D. WA 2014)

COMMENTARY: In a *habeas* petition for relief from state court convictions including five for forgery, relief was denied. A layperson and a handwriting expert testified to check forgeries.

160. *Sanchez v Kerry, Secretary of State*, Civil Action No. 4:11-CV-02084 (U.S. DC S.D. TX 2014)

“The handwriting testimony was at best of marginal assistance to the court. But it did point out to the court the areas of comparison that are useful to examine. The court has examined them, and based on what it has personally observed, finds — as the case law permits — that it is clear that the handwriting of the people who signed the Mexican marriage certificate is the same as that of the people who signed the birth record in Mexico of Israel Sanchez Reyes. Based on comparisons with other known samples of the handwriting of those individuals, those signatures are those individuals’ signatures. All the other information — the names of family members, occupations, and other similar details — clearly supports finding that the Mexican birth record is a valid birth record of a male child named Israel Sanchez Reyes, born in Mexico in 1987, and that the child is the plaintiff in this case.”

COMMENTARY: In an order dated June 9, 2014, the court said it would rule on the Government’s motion to exclude the testimony of Sanchez’s handwriting expert, Curtis Baggett. Apparently he was permitted to testify and gave barely enough useful information to help his client lose the case. There is a good discussion of the court’s authority to conduct its own independent handwriting examination in a bench trial.

161. *U.S. v Adams*, Cr. No. 13-3301 JAP (DC N.M. 2014)

Though testimony is not involved, issues of admissibility are raised and important aspects of compelled exemplars are discussed. A proposed challenge that might be made is suggested in the commentary.

Handwriting experts for Homeland Security needed extensive exemplars in the exact wording of documents at issue. They already had a substantial amount of writings by Adams, apparently done in the ordinary course of business and/or social life. Adams raised four reasons for denying the Government's request, and the Court denied each of Adams' reasons as follows.

1. The request is premature: Adams had pending a motion to suppress the three documents in question, making the requested exemplars premature. However, it would take time to rule on the complicated motion, delaying the exemplars might delay start of trial, and Adams' motion to suppress is not denied by granting the request for exemplars.

2. No necessity: However, "the Government explained that the Forensic Document Laboratory needs an exact, character-for-character copy of each disputed document to reliably determine authorship."

3. Violation of The Fifth Amendment: Case law is entirely against such a claim.

4. Handwriting expertise may be inadmissible: The bottom line is that, "Every court of appeals to consider the issue has permitted the introduction of handwriting analysis."

My paraphrase of the Court's ultimate view is that, after the handwriting experts at Homeland Security submit their report and the Court has ruled on the motion to suppress, consideration of issues of case-specific admissibility could be considered.

COMMENTARY: The second of the reasons Adams offered is the key one for defense attorneys to consider, and where, I believe, they have the best chance at least to diminish credibility in the eyes of the jury, with an outside chance to prevail in an *in limine* hearing on case-specific inadmissibility.

The quote given to support denial of Defendant's motion can be rephrased thus: "Government experts are so inexpert that they can only do what unknowledgeable lay persons do, compare same strokes, letters and words as to form, being incapable of determining the graphic motor sequence, neuromuscular traits, patterns of usage in repeated traits, and such things as size/ratio variation." Charles Hardless, Jr., writing a bit more than 100 years ago, said such incompetent comparison was the unreliable comparison by formation (called comparison of hands in the 19th Century) which was replaced by the scientific method of comparison by characteristics. Major authors of the late 19th Century and into the mid 20th Century were in the same tradition as Hardless, but this admirable expertise has hardly endured among mainstream examiners of today.

The currently vaunted two-year training with a two-year apprenticeship only seems to inculcate this generally accepted ineptitude. Tax money is poured out to researchers who successfully maintain a congenial limitation of understanding about handwriting and "validate" the resurrection of 19th Century Comparison of Hands by statistically

analyzed, replicated research published in peer reviewed journals. Funny how ineptitude can be quite apt at playing the current game of scientific acceptance in which substance may only be measured by ritualistic requirements, fancy symbols and documented acceptance into acceptable groups.

An aside of sorts: The Government's request said that in copying typed material, "At most, Mr. Adams would be required to produce 120 exemplars." If I had said that, it would have been facetious, but they take their ineptitude seriously.

162. *U.S. v Harris, et al.*, Case No. 1:12 CR 579 (U.S. DC N.D. OH 2014)

Defendants were convicted of wire fraud and money laundering. They moved for a new trial, one reason being denial of a continuance so their handwriting expert, Vickie Willard, could testify after recovering from surgery and its aftermath. Denial of the continuance did not work prejudice: "Here, in lieu of testimony, Defendant Harris accepted the government's stipulation that Ms. Willard's expert report be read to the jury. (Doc. 95). And she had the benefit of the introduction of Ms. Willard's report without cross-examination. Defendant Harris cannot demonstrate that the Court's refusal to grant a continuance worked actual prejudice in these circumstances. Defendants' motion for a new trial on this ground is denied."

COMMENTARY: Having seen Ms. Willard's work product on issues regarding ASTM procedures, I believe her report would satisfy all legal and professional standards for forensic reports. However, the best expert witness's best report could not better the expert's live testimony.

163. *U.S. v McDaniels*, Criminal Action No. 12-393-01, Memorandum and Order issued separately (U.S. DC E.D. PA 2014)

Defendant had pled guilty. Lorie Gottesman, FBI handwriting expert, testified at the sentencing hearing, after which Defense moved that her testimony be stricken as unreliable under *Daubert* and Federal Rules of Evidence. The motion was granted. The Trial Court's Memorandum gives very precise explanation of the inadequacies, and thus technical unreliability, of Gottesman's report and testimony at trial.

COMMENTARY: My view is that, if handwriting experts of all persuasions and sources of training and employment were subjected to the thorough evaluation Gottesman underwent in this case, significantly more would be either limited or dismissed as expert witnesses. The acronym ACE-V is stated to be a reliable scientific method, but the witness did not employ it beyond the first step. The four steps are "Analysis, Comparison, Evaluation and Verification." Some day it will occur to someone that steps 2 through 4 are only three of the several phases of an analysis. It is said to be that method used by Lynn Bonjour in *U.S. v Velasquez*, which is discussed in this text. However, I submit it has only a superficial resemblance to the excellent procedure used by Ms. Bonjour.

I recommend the Memorandum in this case as a basic guide in evaluating and attacking a handwriting expert's testimony. One contention by the defense was that the

expert “cherry-picked” the individual letters compared between the questioned and exemplar writings. However, such selectivity is a most common practice in the field, while such focus on isolated letters would be scientific only if letters were written as isolated, individually executed graphemes. They are not. So, absent consideration of the entire graphic movement and the place of the parts of the movement within the whole of it, the expert has done a most inept job and only gave evidence of one’s own inadequate understanding of the human graphic motor sequence and its product. By comparison of isolated cherry-picked letters, almost anyone can be proven both to have written and not to have written almost any disputed handwriting. And that is the greatest reliability of such a methodology: The client can be assured any opinion is available from some well known, respected expert who has extensive experience in supporting either side of any dispute.

How did such inadequacy become the standard for many, if not most, handwriting experts? The literature more and more insists that only like letters and words can be compared, and then only if they are in like styles of writing, and then only if showing no “distortions,” and then for some examiners only if originals are available, and maybe other “then onlys” for the exceptionally inadequate or clever examiners. Comparing writings by current authors regarding allegedly expert knowledge, understanding and competence in handwriting examination, to what was written by Osborn, Saudek, Quirke, Hardless and Hardless, Frazer, Hagan, Ames, and others 50 to more than 100 years ago, one would think the current literature was from long ago ages and the older material just recently produced, since it is so far superior. Today’s retrogressive grasp of the totality of the physiological laws and procedures related to the production of handwriting continues to amaze the objective observer with its canonization of incompetence. This is a typical result of the closed-shop mentality engendered by ingrown societies, such as government document examination training and service and the associations controlled by the rulers of such closed shops.

Gottesman has been with the FBI since 1992 and is a supervisory forensic questioned document examiner. In examining duct tape in the Casey Anthony case, she inadvertently left her own DNA on the tape, which was an occasion of embarrassment to the prosecution and an attack point for the defense.

164. *Vore v Warden, Richland Correctional Institution*, Case No. 1:13-cv-800 (U.S. DC S.D. OH 17, 2014)

“Subclaim 9: Failure to object to the State's introduction of testimony from the defense handwriting expert

“In his Ninth Subclaim, Vore asserts he received ineffective assistance of appellate counsel when his appellate attorney did not raise as an assignment of error his trial attorney's failure to object to the State's calling Vore's handwriting expert to testify. The Report concluded it was proper for the State to do so and therefore not ineffective assistance of trial counsel to fail to object (Doc. No. 31, PageID 1863-64).

“Vore objects that the State could not call the defense handwriting expert because the defense had not called him, citing *State v. Fairchild*, 1999 Ohio App. LEXIS 4012 (2nd Dist. 1999); *United States v. Nobles*, 422 U.S. 225 (1975); *Hickman v. Taylor*, 329 U.S. 495 (1947); *United States v. Walker*, 910 F. Supp. 861 (N.D.N.Y. 1995); and *United States v. Alvarez*, 519 F. 2d 1036 (3rd 1975). *Hickman* is the United States Supreme Court's original recognition of the work product doctrine and *Nobles* does no more than apply it in criminal cases. The cases recognize that the State cannot call a defense expert and ask questions that invade the attorney-client privilege, but the Twelfth District found that did not occur here. *Fairchild* does support Vore's position, although classically the work product doctrine applies to documents rather than oral testimony, which is what was elicited here.

“The Twelfth District did not find this testimony was not work product. Instead, it found the testimony was cumulative, citing *Fairchild* and *State v. Richey*, 64 Ohio St. 3d 353 (1992). On this basis, Vore has not proved prejudice from the failure to object and therefore no ineffective assistance of trial counsel and therefore no ineffective assistance of appellate counsel.”

COMMENTARY: The above is the entirety of the discussion of the handwriting expert. Since no technical issue is even mentioned, I reproduce the complete discussion for the attorney who might face a similar issue and want an initial statement of the possibly applicable legal rules.

165. *Webb v Parris*, Case No. 3:14-cv-01548 (U.S. DC M.D. TN 2014)

In a hearing on a *pro se* petition for a writ of *habeas corpus*, Webb based his case partly on a claim of ineffective assistance of counsel at the underlying trial.

“The petitioner argues that his trial counsel was ineffective for failing to engage or consult with a handwriting expert. He presented this claim in his post-conviction proceedings. The parties stipulated at the post-conviction hearing that handwriting expert Jane Eakes had concluded that the petitioner was not the person who signed Penny Holt's name on the duplicate car title. The petitioner argues that this evidence would have been important because the state, even though it stated during closing arguments that it did not have to prove that Mr. Webb actually signed Ms. Holt's name to prove forgery, it nonetheless went to great lengths during the trial to establish just that. The state trial court rejecting this claim, concluding that, even if a handwriting expert had testified at trial that the petitioner did not sign Ms. Holt's name, ‘the jury still could have convicted the petitioner based on the theory that the petitioner knew someone else had signed Ms. Holt's name’ and that ‘the State argued both theories to the jury at trial.’”

COMMENTARY: On the face of it a non-specialist might think trial counsel blundered, but this decision explains why an apparent blunder is not a blunder. There seems to be an unwritten rule that the attorney must be saved and the client sacrificed if at all possible. Ms. Eakes is a certified member of NADE.

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166. *American National Property and Casualty Company, Plaintiff, v Stutte, et al.*, No. 3:11-CV-219 (U.S. DC E.D. TN 2015)

Defendants brought motion to exclude testimony by Jane Eakes regarding the authorship of graffiti. The court considered Eakes' deposition testimony and filings by the parties in deciding she could testify. However, she would not be allowed to name one of the defendants as writer of the graffiti or address a motive for it. All aspects of expert testimony were considered.

COMMENTARY: The court gives sound reasoning for its decision which is an excellent example of balancing of the facts and arguments presented by the parties and doing so with good logical development. The one possible flaw is that the very purpose of most expert handwriting evidence is to offer evidence as to who exactly wrote the disputed writing. Defendants planned to present their own handwriting expert on the same issue, so that excluding Eakes would prejudice the Plaintiffs.

Memorandum Opinion and Order of May 5, 2015, disallows report of Larry Miller as filed too late, and also third report of Stutte's expert, Charles Perrotta, since also did not comply with rules. Additionally, with Miller out there is nothing of his to reply to. Eakes, though not named, is reaffirmed as admissible and relevant. The Memorandum of May 05 has legal discussion of why the rulings were made and why objections to them are rejected. All rulings are legal technicalities and have no basis in lack of expert qualifications. The extensive discussions by the court might help one learn how to avoid such exclusion of one's own experts.

167. *Anderson v Colvin, Acting Commissioner of Social Security Administration*, Case No. 1:13-cv-00496-CWD (U.S. DC D. ID 2015)

COMMENTARY: There is no evidence from a handwriting expert, but I include the case as an object lesson for attorneys. Petitioner could well have used an expert knowledgeable about medical research into the dynamics of writer's cramp. In rejecting Petitioner's claims based on severe writer's cramp, the Administrative Law Judge [ALJ] relied on the following symptoms:

- alleged combination of constant tremors, left arm pain and mental impairments;
- claimant's longitudinal medical history not supportive of allegations of disabling symptoms and limitations;
- with regard to alleged constant tremors, a doctor found, though intermittent and variably intense, they did not inhibit his ability to write or handle light objects;
- the nurse practitioner reported tremors were pronounced on some days and non-existent on other days;
- tremors not preclusive of a limited range of light unskilled work;
- Petitioner's Adult Function Report written by himself appeared legible and smooth;

- Petitioner’s testimony he needed 20 minutes to write one sentence, made ambiguous by claimed difficulty in understanding;
- claims of disabling tremors and left arm pain inconsistent with his day-to-day activities;
- then there is a list of daily activities each of which the ALJ said could reasonably be found inconsistent with allegations of disabling arm pain and tremors.

Neither singly nor grouped are these dispositive, due to such factors that tremor can be activity-specific. One cannot evaluate the evidence just from the case report, because necessary data is missing. If the tremor and accompanying cramp are organic in origin, and thus a dystonia, it is quite a different case from cramp and tremors that are rooted in behavioral factors.

168. *Brill v Trans Union LLC*, No. 15-cv-300-slc (U.S. DC W.D. WI 2015)

Brill claimed his signature was forged and that Trans Union should have realized it or investigated and determined the fact. However, Trans Union had no such duty, the court granting defendant motion for dismissal.

COMMENTARY: There was neither an expert nor expert testimony, but the case is included because of unreliability of handwriting expertise as shown in *U.S. v Johnsted* which was decided in 2013 in the same District Court, as stated in footnote 5:

“It is worth noting is that [sic], notwithstanding Brill's unflagging insistence that even lay people can accurately identify forged signatures, courts remain skeptical whether even trained experts can draw reliable conclusions from handwriting comparisons. See, e.g., *U.S. v. Johnsted*, 12-cr-146-wmc (W.D. Wis.) in which the court granted defendant's *Daubert* motion to strike the testimony of the government's handwriting experts, noting that the entire field of handwriting analysis rests on a shaky foundation that relies on inadequately tested principles. Oct. 8, 2013 order, dkt. 41. In the instant order addressing a 12(b)(6) motion, this court cannot and will not rely on or find facts outside the allegations in Brill's amended complaint. The point is that, as a legal matter, just because Brill characterizes handwriting examination as a ‘reasonable’ step for a CRA to take during reinvestigation doesn't make it so.”

169. *Byars v Commissioner of Social Security*, No. 14-1267-JDT (U.S. DC TN W.D. 2015)

Plaintiff sought disability payments on basis of various limitations, one being inability to use her hand for various fine motor tasks. However, she handwrote a two-page form needed to file her claim. That and similar contradictions in other aspects of her claim defeated her case.

COMMENTARY: Neither an expert nor testimony regarding handwriting was involved, but I include the case to alert readers that evidence of graphic ability and production can serve several other needs than the identification of who did or did not write something.

170. *Crawford v Compass Group USA*, No. 14-2545 (JBS/JS) (U.S. DC D. NJ 2015)

In an effort to defeat a motion for summary judgment, Crawford failed on all points. Mark Songer was his handwriting expert, but the Court found him inadmissible and/or inadequate on several issues, one after the other. Each succeeding one was discussed on the unlikelihood the previous one was insufficient to reject him and his opinion.

COMMENTARY: Songer's web site says he is D-ABFE, diplomate of one of Dr. Robert O'Block's baker's dozen of certifying organizations. However, a published interview with O'Block and his spokesman gave this assessment of their credentials:

"But both O'Block and Wecht, the group's official spokesman, stressed that ACFEI certificates alone don't make you an expert. 'It's designed to make somebody feel good, to make them feel they've accomplished something, and I would hope they have,' Wecht said in an interview. 'Does it really qualify them to be the expert in a particular field? No.'"

I wonder why opposing attorneys do not bring such poignant tidbits of truth to the attention of courts of law, that those who peddle these credentials put no stock in them.

171. *Crawford v Franklin Credit Management Corporation, et al.*, No. 08-CV-6293 (KMW) (U.S. DC S.D. NY 2015)

Plaintiff denied having signed loan documents. Andrew Sulner testified that she had but the opinion was not definitive since he only had copies. A jury had found she had signed the loan papers, and her post trial motion to set aside the verdict was denied.

COMMENTARY: I believe that defendant corporations should suffer some sanction for not producing all the original documents that are required when the loan is made but destroyed by them afterwards. The same goes for other documents corporations routinely destroy, such as checks, that later are needed as primary evidence in a dispute involving the documents or as exemplars in another dispute. They make money by destroying evidence the public could well need later and then make money because this destruction gives them an advantage in litigation.

172. *Farmer v U.S.*, Civil No. 14-cv-694-JPG, Criminal No. 11-cr-40073-JPG-001 (U.S. DC S.D. IL 2015)

"Wrice and Anderson also testified that Farmer had written the bank robbery note announcing that the robbers had guns prior to their arrival at the bank. A handwriting expert testified that the note was written in handwriting with similarities to Farmer's handwriting, although the fingerprints on the note were never matched to Farmer's. Farmer, on the other hand, testified that she was not involved in the robbery in any way and had loaned her vehicle and cell phone to Wrice without any knowledge that Wrice and Anderson were going to use them to commit a robbery. The jury rejected Farmer's defense and convicted her of both counts. Having chosen to believe Wrice and Anderson over Farmer as to the overall crime, it is extremely unlikely that the jury would have

disbelieved their testimony specifically relating to whether and when Farmer knew that guns would be brandished in the robbery. Thus, the jury would have found Farmer knew guns would be brandished in the robbery in plenty of time for her to easily withdraw from the armed robbery before it even began. There is no reasonable probability that, even if instructed consistent with *Rosemond*, the jury would have found Farmer not guilty.”

COMMENTARY: If Wrice and Anderson, who apparently pulled off the actual robbery, were given a break for implicating Farmer, I believe the jury should be told of this. I for one see no difference between letting one defendant off in part or whole for testifying against another and paying a witness a sum of money or other material goods for the same performance. Bribery is bribery to my simple mind. And the opposite practice of threatening worse punishment for not giving damning testimony against another is, to my persistently simple mind, nothing but extortion. However, in these cases bribery and extortion are quite legal since they are essential prosecutorial tools to obtain a conviction that strict adherence to the letter of the Constitution and other just practices would hinder. Our sense of safety requires that the prosecutors can put any of us in prison upon scientifically or constitutionally inadequate evidence, while the legally adequate be expanded beyond all rational adequacy.

As to the handwriting expert, as Albert S. Osborn pointed out, everyone who handwrites in any language must have similarities to everyone else who handwrites in the same language, otherwise they cannot read each other’s handwriting. As for the fingerprints, if they match, the defendant handwrote the note. However, if they do not match, the defendant still handwrote the note. And we can ignore all the piles of probabilities which are based on surmise by the trial and appeal judges and that remove the conviction from evidence of any sort, much less beyond a reasonable doubt.

173. *Hekking, et al., v Hekking, et al.*, C.A. No. 14-295-ML (U.S. DC D. RI 2015)

The case report begins: “This case involves a bitter family dispute over a considerable inheritance.” The brother who administered the inheritance did so poorly that eventually the court ordered him to sign documents dismissing himself in court before all parties and their attorneys. One incident along the way is described thus: “On September 17, 2014, following an evidentiary hearing in which Craig H.’s version of the events was conclusively disproved by a meticulous service processor and a highly qualified handwriting expert, this Court issued a lengthy Memorandum and Order (Dkt. No. 28).” The Memorandum and Order was vacated only to be reinstated later with order to reimburse costs to Plaintiffs in amount of \$30,777.93, out of personal not estate funds.

COMMENTARY: This case has some of the most extensive and continued violations of court orders of all the cases reviewed for this compilation.

174. *Huntington National Bank v Szpindor, et al.*, No. 1:14-CV-1455 (U.S. DC N.D. IL 2015)

This was a condition for settlement:

“D. Handwriting Analysis: As a precondition to settlement, Defendant Szpindor agrees to submit to a forensic handwriting analysis performed by an expert of HNB's choosing within thirty (30) days of the execution of this Agreement. The handwriting analysis shall be performed for the purpose of verifying Defendant Szpindor's assertion that she did not sign the War Lord I loan documents. In the event the results of the handwriting analysis are deemed to be inconsistent with Defendant Szpindor's assertions that she did not sign the War Lord I loan documents, Plaintiff retains the right to revoke this Agreement at its discretion and in its entirety.”

COMMENTARY: No handwriting testimony is offered, but presumably all parties considered it reliable. It might have been ill advised to agree to HNB's choosing the expert, since it is a fact of life that one can shop for a compliant handwriting expert, one being most expert in agreeing with the client. Better to insist the court choose an independent expert. Even that is no assurance of fairness. I was involved in only one case where the judge chose an independent expert whom neither party was to communicate with but who was to consider only materials and questions provided by the judge. His report addressed questions not provided by the judge, quoted part of my testimony verbatim and employed materials not supplied by the judge. The judge did not particularly care about this evidence of flagrant violations of his orders. But that was not the least of the wondrous stances by that judge. Among all the judges I testified before, his attitude and behavior were definitely idiosyncratic.

175. *Kite v Pascale, Jr., and Pascale-Burger Rentals Inc.*, Civil No. 3:07-cv-0513(AWT) (U.S. DC D. CT 2015)

Kite is sister of Pascale, Jr., whom she sues over inheritance from their father, Pascale, Sr. It seems she prevailed on most everything except payment of a loan in Junior's favor. I quote two paragraphs on that issue and leave it to the reader to read of other issues in the case report itself:

“On February 2, 2004, Senior endorsed the Commercial Promissory Note, indicating that it had been paid in full. Junior testified that Senior wrote his signature in his own handwriting and that he handed the original to Junior, with ‘paid in full’ written on it and with Senior's signature on it. The plaintiff contends that Junior forged Senior's signature. The plaintiff engaged John L. Sang, an expert in the field of document forensic examination, to examine the authenticity of the ‘John Pascale, SR’ signature on the February 2, 2004 statement on the Commercial Promissory Note that it had been paid in full (the ‘Questioned Signature’). Sang compared the Questioned Signature to examples of Senior's and Junior's signatures, which were provided to Sang by the plaintiff's counsel. In Sang's opinion, the Questioned Signature was ‘probably not’ written by Senior, and ‘there are indications’ that the Questioned Signature was written by Junior. (John L. Sang, Report Forensic Document Analysis, Ex. 23 at 6-7.)

“After considering Sang's report and testimony, and looking at blowups of the signatures, the court is not persuaded by Sang's analysis and, moreover, finds Junior's

testimony about the execution of the release persuasive. Sang states in his report that he has ‘reservation[s]’ about his opinions regarding the Questioned Signature because he analyzed copies, not originals, of the Questioned Signature and most of the signatures of Senior and Junior to which he compared the Questioned Signature. (Id. at 6, 7.) Sang testified that the copying process causes a 25% loss of the data found in the original signature. Sang testified that, among other concerns that flow from relying on copied signatures, he could not determine where certain signature strokes started and stopped. In addition, Senior’s signature exhibited substantial variation, especially later in his life, when it deteriorated materially — and that is the point in time when the statement on the Commercial Promissory Note was signed. Although Sang testified that such differences could be explained by natural variations in Senior’s handwriting, the plaintiff has not shown that the differences between the Questioned Signature and the undisputed signatures are the result of anything other than natural variation, much less that it was Junior who wrote the Questioned Signature.”

COMMENTARY: I am aware of no study quantifying a 25% loss of data by photocopying. Does it mean that after the fourth copying no reliable data is left? Or does it mean that each copy loses 25% of the data remaining after the previous copying process? Whatever it means, how could one establish such a theory, and are not some copy processes far inferior to others? Does not some data suffer more loss and more easily than other? I offer that this theory ought not to have been considered and the testimony stricken.

176. *Larry v Rivard*, Case No. 10-13047 (U.S. DC E.D. MI 2015)

This is a Memorandum and Order Denying Petition for Writ of *Habeas Corpus* and Denying a Certificate of Appealability. Waiting trial in state court, Larry endeavored to simplify and expedite the upcoming proceedings:

“As a result of an altercation between defendant and another of defendant’s cellmates, defendant was relocated to a different cell in the Oakland County Jail. After defendant collected his personal effects, defendant sat on Henderson’s bunk and wrote a note, which defendant then gave to Henderson. As defendant handed Henderson the note containing the victim’s name, her birth date, the names of the victim’s parents, and defendant’s name and inmate number, defendant admonished Henderson to ‘make sure she never shows up in court.’ At trial, expert document examiner Ruth Holmes opined that there was ‘the highest degree of probability’ that the handwriting on the note defendant handed to Henderson matched the handwriting on other documents written by defendant.”

COMMENTARY: A police officer made phone contact with Larry to enquire whether he had found someone to do the job. Assuming the anonymous caller was the kind of skilled service person needed, Larry explained what he wanted done and the remuneration offered for doing it. In the end, at least he was saved expenditure of the money offered.

Holmes is a diplomate member of NADE.

177. *M.H., et al., v County of Alameda, et al.*, Case No. 11-cv-02868-JST (U.S. DC N.D. CA 2013); Order on Motions *in Limine* (U.S. DC N.D. CA 2015)

In the 2013 ruling, Defendant had to pay the cancellation fee charged by Plaintiff's document examiner for cancellation of a scheduled examination of Plaintiff's documents since it was unreasonable of Defendant to cancel.

In the 2015 ruling, 13 motions by Plaintiff and 60 by Defendants are ruled on. One defense motion *in limine* requested handwriting expert Patricia Fisher be prevented from testifying at trial regarding her two opinions. The first motion that she not be permitted to say changes in the notations in the medical record were not made on the same day the original notations were made was denied. The second motion, based on the reliability and relevance prongs of *Daubert*, that she not be permitted to say pages were missing from the medical record was granted. The court stated:

"Here, neither party offers significant evidence or argument regarding the reliability prong. Even assuming for the sake of argument that this prong is satisfied, however, the Court concludes that Plaintiffs have failed to meet their burden of satisfying the relevance prong.

"Defendants state without contradiction that Ms. Fisher has no knowledge about how Mr. Harrison's medical chart was gathered or maintained, or about how medical documents are gathered, maintained, and preserved by Corizon; has no opinion about whether Mr. Harrison's medical records were complete or not; does not know if the 'missing' writings were medical records or not; does not know if the 'missing' writings were required by law or Corizon policy to be preserved; does not know if the 'missing' writings related to Mr. Harrison or not; and does not know the type or content of alleged 'missing' writings, including whether they have any relevance to the case, were sticky notes, or even employee notes not part of the chart, or whether they were ever part of the chart. While Ms. Fisher's report seems clearly to support a finding that certain documents in decedent Harrison's medical file came in contact with some other documents that were not maintained in that file, there is nothing about her methodology that provides any basis for concluding that those other documents were meant to be maintained in that file, i.e., that the documents are 'missing.'

"This portion of the Corizon Defendants' motion is GRANTED.

"In their opposition to this motion, Plaintiffs cite several facts that they argue support the inference that documents that were originally contained in decedent Harrison's medical records were subsequently removed. This order takes no position on the admissibility of that evidence or whether it would support such an inference.

"In addition, the Court, on its own motion, will order that neither party make reference to the fact that Judge Tigar apparently qualified Ms. Fisher as an expert in a trial conducted while Judge Tigar was a judge of the Superior Court for the County of Alameda. The Court has no recollection of this event, but it is stated in Plaintiffs'

opposition to the motion. See ECF No. 317 at 83. Reference to it would potentially give Ms. Fisher added credibility in the eyes of the jury, although the fact is irrelevant.”

COMMENTARY: Ms. Fisher was permitted to testify to the first of her two opinions but not the second. There is currently much discussion as to whether forensic experts should be given any background knowledge about the case lest their opinion be biased. What seems not to be discussed is the far more important statement of the question: “How can the expert or the client or the client’s attorney determine what is essential background information for the expert’s complete, reliable, relevant, and correct evaluation of the evidence and formation of an appropriate opinion?” In this case this essential chore was seemingly let go by the board. I believe experts ought to enquire about all circumstantial and background information that may reasonably bear on their work in a case. Their clients would do well to raise this question with their experts while not supplying information or documentation without the expert’s concurrence as to its technical applicability.

178. *O'Neill v Baker, et al.*, Case No. 3:11-cv-00901-MMD-VPC (U.S. DC D. NV 2015)

Petitioner O’Neill took to Federal District Court the affirmation by the Nevada Supreme Court of the dismissal of his two state postconviction *habeas* petitions. The District Court found all grounds had been exhausted regarding his challenges to testimony by the State’s handwriting expert, mostly because Petitioner had not presented the grounds originally before the state courts.

COMMENTARY: This is where I come up against the inescapable limitation I have by not being an attorney and so not being able to comprehend all the fine logic used by attorneys and courts of law. First, whether or not a litigant knew what one’s attorney was doing, or even adamantly objected to it, the client did it all personably and deliberately. It seems to me that this rule works especially against those not endowed with at least slightly sub-average intelligence. Second, this case shows a ground for appeal based on ineffective assistance of appeal or trial counsel can stare everyone in the face but must not be noticed, which directly leads to a second, unstated but inviolable rule. In this case it was that the first appeal counsel in the state system failed to bring up the issue which is now ruled exhausted on the federal level because it was not brought up on the state level. There are people who are exhausted without ever exercising or working, so I guess legal causes can be exhausted on the same basis. It is thus that a claim of an alleged error is ruled exhausted precisely because it was never exercised. Consequently, the ineffectiveness of both trial and appeal counsel is effective because their ineffectiveness effectively failed to have the alleged error by the court ever considered until later appeal counsel brought it up when it must not be considered, much less exhausted.

Because I cannot comprehend the hidden logic in such cases as this, it is best I never went to law school. Unhappily, I cannot escape the irrationality of it all since American case reports are written in English, and I have read English since Kindergarten, starting with “Bob and Nancy, Book One,” and now ranging into forensic topics of

several kinds, Aristotelian-Thomistic logic and philosophy, history, paleography, literary lights from Shakespeare and Milton to the far dimmer lights of modern alleged poets, and sundry other types of both scholarly and normal literature. Fortunately, a goodly number of case reports are masterpieces of logic, well composed literature, and even masterful wit. So I keep going through massive landfills of inferior writings, ever hoping for that literary pearl of great price that will feed my hunger for literate works of refined aesthetics, stately logic and rich intelligence.

179. *Ramada Worldwide, Inc., v Jafri, et al.*, Civ. No. 12-cv-5301 (KM) (U.S. DC D. NJ 2015)

The scene is set thus: “Now before the Court are cross-motions for summary judgment filed by RWI and Jafri. Jafri, while admitting that he signed the guaranty, contends that his co-guarantors' signatures were forged, relieving him of liability. That defense does raise genuine, material issues, both as to the fact of forgery and RWI's knowledge of or involvement in the alleged forgery. For the reasons set forth below, both sides' summary judgment motions will be denied.”

The outcome of the squabble over motions for summary judgment is pretty much given away early on: “There is patently an issue of fact as to whether the signatures are forged. Jafri has submitted a handwriting analyst's report. The report is skimpy and unsworn, casting doubt on the admissibility of the expert's testimony.[2] At oral argument, however, it emerged that Askari Jafri and Wajih Jafri had testified in depositions that the signatures were not theirs.”

Footnote 2 states the purpose of our considering this case:

“[2] Expert testimony admitted under Federal Rule of Evidence 702 must meet three requirements: ‘(1) the proffered witness must be an expert, i.e., must be qualified; (2) the expert must testify about matters requiring scientific, technical or specialized knowledge; and (3) the expert's testimony must assist the trier of fact.’ *Pineda v. Ford Motor Co.*, 520 F.3d 237, 244 (3d Cir.2008).

“The report of Jafri's forensic expert, James L. Streeter, is not supported by an affidavit or declaration. See Fed. R. Civ. P. 56(c)(1)(A); *Fowle v. C & C Cola*, 868 F.2d 59, 67 (3d Cir. 1989) (An unsworn expert report ‘is not competent to be considered on a motion for summary judgment.’); *Burrell v. Minnesota Min. Mfg. Co.*, 2011 WL 5458324 (E.D.Pa. June 9, 2011) at *1 n.1 (refusing to consider plaintiffs expert report on defendants' motion for summary judgment because it ‘was not sworn to under penalty of perjury.’) Further, before accepting it, the court would need to conclude that these are not unsupported conclusions, or (in New Jersey state court parlance) ‘net opinions.’ Although expert testimony ‘as to the similarities in handwriting is generally admissible’, see *U.S. v. McGlory*, 968 F.2d 309, 346 (3d Cir. 1992), it is well settled that ‘expert testimony that contains bare conclusions, unsupported by factual evidence’ may be excluded.’ *Holman Enterprises v. Fid. & Guar. Ins. Co.*, 563 F. Supp. 2d 467, 471-72 (D.N.J. 2008) (citing *Buckelew v. Grossbard*, 87 N.J. 512 (1981)); see also *Fedorczyk v. Caribbean Cruise*

Lines, Ltd., 82 F.3d 69, 75 (3d Cir.1996) (‘An expert opinion is not admissible if the court concludes that an opinion based upon particular facts cannot be grounded upon those facts.’).

“The report compares the disputed signatures on the guaranty to a list of known signatures of each of Jafri's three partners. (See Dkt. No. 22-4, at 25-34, 36-38) It does not explain why these particular known signatures were chosen while others were not. See *Merrill Lunch Business Financial Inc. v. Kupperman*, 2007 WL 4287684, at *2 (D.N.J. Dec. 4, 2007) (rejecting motion to reconsider exclusion of defendant's expert report claiming defendant's signature was forged on these and other grounds). The documents containing ‘known’ signatures were not included in the report or otherwise presented to the Court. The report does contain a single image of each partner's signature, but fails to identify the source, and does not even explicitly state that the signature appeared on any particular document reviewed by the expert. The report states that each of the signature comparisons ‘revealed numerous dissimilarities in individual handwriting characteristics and habits’ (see, e.g., Dkt. No 22-4, at 27), but does not offer any meaningful or rigorous explanation of such dissimilarities. See *Kupperman*, 2007 WL 4287684, at *2 (‘The report concludes that [the defendant's] Guaranty signature contains ‘dissimilar’ letters, without explaining how, why, or to which specific documents.’)”

COMMENTARY: I devote much space to this case because it is packed with fruitful ideas on challenging forensic document reports. One should be cautious in attributing to Mr. Streeter the diminished assessment the court gives his report. He might not have been told of the use of his report in a motion requiring an affidavit of him. Clients often assert that they only need a summary statement of opinion minus the substantive backings. In reality they often are being “penny wise and pound foolish” as the old proverb says, one of my Mom’s favorites. Even if the opposing expert’s report appears to meet all standards required, both legal and professional, an expert who operates above standard might provide an effective challenge to it. For example, a colleague of mine opposed an examiner who had very enlarged images of the writing line from a photocopy that allegedly proved a forgery. My colleague made similar enlargements from the copy of the opposing expert’s own signature to his report, showing the very same anomalies. In a *reductio ad absurdum* the expert’s theory and method proved his own report to be a forgery. Was he being devilishly clever or just technically inadequate?

180. *Sherman v Baker, et al.*, No. 2:02-CV-1349-LRH-VCF (U.S. DC D. NV 2015)

COMMENTARY: The testimony of a handwriting expert was received.

181. *Silvaggio v Cement Masons Local 526 Pension Fund, A/k/a Cement Masons Local 526 Combined, Funds, Inc.*, No. 2:12cv1605 (U.S. DC W.D. PA 2015)

Palma Silvaggio sued the pension fund because she received only 50% of her husband’s full pension after his death. Her suit offered several reasons why she should

have received 100% of his pension payment for life. The court rejected all her causes including the one regarding a handwritten check mark:

“Regarding the check mark selecting the 50% Option on the Application, Plaintiff argues that Michelle Dresbold, a handwriting expert, testified at the appeal hearing and opined that the mark selecting the 50% Option was not made by either Domenic or Palma. As further evidence, Plaintiff contends that a report prepared by forensic handwriting expert, David Liebman, also concluded that the mark was not made by either of the Silvaggios. Neither Dresbold's testimony nor Liebman's report, however, are included in this record.. Because such assertions are unsupported in the factual record, Plaintiff cannot rely upon them to create a material issue of fact.”

COMMENTARY: Ms. Dresbold plagiarized Cina Wong's work product in the *Wolf v Ramsey* case and included it in her book, *Sex, lies and handwriting; a top expert reveals the secrets hidden in your handwriting*, as her own work product.

Nothing is indicated as to the factual or theoretical bases of their opinions why neither of the Silvaggios had made the check marks. Case law for most states requires several criteria for reliability, the first of which, for example, is that comparison be made to the same kind of marks by the suspected writer, not to ordinary handwriting.

182. *Smith v Jenkins*, Case No. 1:14-cv-803 (U.S. DC S.D. OH 2015)

“Smith similarly complains that Detective Kinney was permitted to testify about a handwriting comparison while not having been qualified as an expert. But a witness does not have to be qualified as an expert if he is able to testify based on long experience. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). In any event, the admission of evidence is a state law question and the federal Constitution is usually not implicated.”

COMMENTARY: A favorite literary quote of mine is from *The King and I* when the King expresses his perplexity: “‘Tis a puzzlement!” One who is without qualifications as a handwriting expert qualifies if he has long experience in testifying without qualifications. Thus, sufficiently long experience at being unqualified qualifies one. Additionally, if the state law on the matter is violated and thus the defendant is convicted on illegal evidence, the federal Constitution has nothing to say of such violation of the defendant's federal constitutional right to a fair trial.

All this must make perfectly good sense to someone.

183. *Thomas v U.S.*, Nos. 2:03-cv-02416-JPM-TMP, 2:98-cr-20100-01-JPM (U.S. DC W.D. TN 2015)

This is a very lengthy case report that considers several claims in requesting a certificate for appealability in the aftermath of a trial in which Thomas was convicted. Only one claim is granted. One of those denied involved testimony by two document examiners, Grant R. Sperry for the prosecution and another for Defendant. The treatment of this phase of the evidence is longer than most case reports and of (a word I hesitate to use regarding a court's evaluation of forensic evidence) an exquisite analysis of the

document experts' testimony. In sum, the Court discounted defense examiner's testimony.

COMMENTARY: I had occasion to review the latter's report in a subsequent case, and sadly it seems one learned nothing from the experience in the *Thomas* case. There is a special skill a number of document examiners have of making nothing that is remarkable in their experience as being far more than remarkable. Some with hardly anything that could be characterized as competence have made a career of making mountains out of mole hills. Others have only built mole hills and offered them up as mountainous evidence, persuading the easily impressed to be impressed, not by the expert's expertise, but by the fortunate opportunities to develop expertise, all the while sadly clinging to technical inexpertise. The judge in this case proved to be one who could not be bamboozled.

Sperry was, as usual, most impressive. What I like most in his presentation is that, faced with a most vulnerable individual as opposing expert, to my recall he never addressed his opposing number individually, either on a personal or professional level. His only reference in that regard was a necessary answer that the examiner was mistaken on an observation, in turn giving the correct observation. He showed a remarkable and rare facility for describing inconspicuous features that distinguished similar traits in the exemplar and questioned materials and explaining the cogency of the evidence they provided. If the reader thinks I esteem the man's performance too much, I might. However, I think he proves that expertise is not proven by opportunities to develop it or by pieces of paper that assert it is a reality, but established solely by the witness's qualities in professionalism and excellence in work product.

184. *True Traditions, LC, v Wu, et al.*, Case No. 14-cv-03605-BLF, A.P. No. 13-5062 SLJ (U.S. DC N.D. CA 2015)

"In addition to extensive documentary evidence, the parties presented four witnesses in the two-day bench trial before the bankruptcy court. Appellees introduced the testimony and expert reports of Jay Douglas Crom, an expert on accounting and insolvency issues, and M. Patricia Fisher, a handwriting expert."

COMMENTARY: The decision of the bankruptcy court was affirmed in Appellees' favor.

185. *U.S. v Benzer, et al.*, Case No. 2:13-CR-18 JCM (GWF) (U.S. DC D. NV 2015); Denial of Defendant Ruvolo's motion to reconsider bail (U.S. DC D. NV 2015)

Defendant Gillespie filed a motion of acquittal, alleging a reasonable jury could not convict her. One reason was that the government failed to refute the evidence of her handwriting expert's testimony regarding forged or "fraudulent" exhibits. However, her handwriting expert confirmed that her signature appeared on the final loan application on which she had made false statements. Her motion was denied, as were those of two other defendants who had joined in her motion.

COMMENTARY: The report does not tell us what evidence from her handwriting

expert Gillespie, if believed, would assure her acquittal. Given her expert's evidence supporting her conviction, one can well imagine why the government would not bother refuting it.

The motion to reconsider bail states this regarding handwriting expert testimony:

“Finally, defendant alleges that his ‘signature was forged on numerous documents by coconspirators’ and that these forgeries were demonstrated ‘when a qualified expert in forgery/handwriting testified in Court pointing out the inconsistencies in the signature.’” Doc. #714.)

“William Leaver, the only handwriting expert to testify at trial, did not offer any opinions on defendant's signatures, forged or otherwise.”

186. *U.S. v Chai and Lee*, No. 13 Cr. 290 (PAC) (U.S. DC S.D. NY 2015)

Under “Preclusion of hearsay testimony” the trial court states:

“Mr. Lee asserts that the Court improperly precluded testimony by John Osborn, Mr. Lee's handwriting expert, that a number of fraudulent prescriptions bearing Mr. Lee's initial ‘H’ were signed not by Mr. Lee, but by Ji Lee. To support Mr. Osborn's testimony, Ji Lee submitted an affidavit identifying the handwriting on certain prescriptions bearing the initial ‘H’ as his own; Mr. Osborn compared that handwriting to the handwriting on other prescriptions with the initial ‘H.’ The Court allowed Mr. Osborn to testify that the handwriting on a number of prescriptions bearing the initial ‘H’ was not Mr. Lee's. The Court rejected Mr. Osborn's attempt to repeat Ji Lee's hearsay statement that he had signed certain prescriptions with the initial ‘H.’”

Ji Lee was not an unavailable witness so that his affidavit could be used at trial because he never invoked his Fifth Amendment right. The court also noted that inadmissible hearsay evidence cannot be got in because a handwriting expert legitimately used it:

“Federal Rule of Evidence 703 permits experts such as Mr. Osborn to rely upon inadmissible facts in forming an opinion. Those facts, however, may only be disclosed to the jury ‘if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.’ Fed. R. Evid. 703; see *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 136 (2d Cir. 2013) (‘a party cannot call an expert simply as a conduit for introducing hearsay under the guise that the testifying expert used the hearsay as the basis of his testimony’) (citation omitted). Here, the probative value of admitting Ji Lee's statement was low. Mr. Osborn was permitted to testify as to his ultimate conclusion—that the handwriting on a number of fraudulent prescriptions bearing the initial ‘H’ did not belong to Mr. Lee—without repeating Ji Lee's hearsay assertion that certain signatures were his own.”

COMMENTARY: The Osborn family of document examiners, beginning with the patriarch Albert S. Osborn, spells their name without the final “e.” Like some other case reports, this one uses both spellings.

I would assume an expert, who is trained in accordance with such standards as

ASTM and SWGDOC and has extensive experience as Osborn does, would be aware of the rules about hearsay testimony by an expert. However, no expert can play attorney and argue some legal basis for not answering impermissible questions. I believe only where an answer would violate our professional codes of ethics or the technical or scientific parameters of our expertise might we legitimately decline to answer with a technical explanation why. Tactically no form of the word “refuse” should be used, but the very refusal be stated as a reply. I declined that way in one case because it required a direct statement of unethically doctored, enlarged exhibits by an unnamed document examiner. When the judge ordered me to answer anyway, I made it a point to repeat what made me hesitate but that I was reluctantly obeying the judge’s order. No one objected to that way of replying.

187. *U.S. v Crespo*, No. 3:12-CR-00171 (JCH) (U.S. DC D. CT 2015)

In an order for restitution by a dealer in forged art works sold to his customers, the expert evidence at trial is reviewed. Experts named are FBI Agent Kurt Siuzdak who testified to expert Emanuel Benador's opinion; an unnamed FBI document examiner; Crespo's expert, Dr. Jay St. Mark, who was helpful in identifying a number of art forgeries; and some victims who reported results of their own investigations, such as a microscopic examination revealed an alleged lithograph was a machine printed reproduction.

COMMENTARY: The case report is an interesting introduction to the ins and outs of art forgery cases. Some document examiners apparently have discovered the money to be made in authentication of art works and collectibles, particularly signatures, without being aware of the special nature of the work. There was, and hopefully still is, a professional standard that the authenticator stands by the written opinion forever. One qualified as a traditional document examiner is not *ipso facto* reliable as an art expert. Be particularly cautious about the bargain-basement expert in either field.

188. *U.S. v Durst*, Section C (1), Criminal Action No. 15-091 (U.S. DC E.D. LA 2015)

In a complex case involving prosecution in Federal Court in Louisiana, prosecution in California state court for murder, and involving search warrants in those two states plus Texas, Durst sought six handwriting comparison reports cited by the prosecution in obtaining search warrants. The federal magistrate judge in New Orleans denied the request, but the district judge overruled the denial since the government had possession and control of the California handwriting comparisons which were a basis for the search warrants permitting federal agents, in cooperation with California law enforcement, to discover evidence that became basis for the federal prosecution. Also, since they were discoverable under *Brady* and Durst had initiated a *Franks* challenge, he had a right to the comparisons.

COMMENTARY: There are more legal details than the above. Although there was no testimony involved, I include the case since it might serve a defense attorney who

needs grounds to force production of handwriting evidence from the government.

189. *U.S. v LeBeau and LeBeau*, No. 5:14-CR-50048-KES (U.S. DC S.D. W.D. 2015)

Among several challenges to a lawful arrest and search was a denial of having signed a consent for a search. Only a quote of the full passage will do justice to the opinion of the defense handwriting expert:

“Gers claims that he did not sign the consent form. He put forth testimony from Wendy Carlson, a forensic document examiner and handwriting expert. Ms. Carlson opined that the signature line which purports to be the signature of Gerald LeBeau is not Gerald LeBeau's signature. (Hr'g Tr. 32) Ms. Carlson further testified that it is highly probable that the person who signed Lyle Tolsma's name also signed the purported signature of Gerald LeBeau. (Hr'g Tr. 33). Gers provided Ms. Carlson with a document purporting to be the known signature of Gers LeBeau, (Ex. K-1). She was asked to compare that with the signature on Exhibit 11 to determine whether they were consistent. Ms. Carlson relied upon Exhibit K-1 being a known signature, without knowing the content of when or how Exhibit K-1 was prepared.

“The government offered the testimony of Daniel P. Anderson, a document examiner with the FBI Laboratory in Quantico, Virginia. He testified that he was unable to determine whether Exhibit 11 was signed by Gerald LeBeau or not. To this point, he testified that the signature was not comparable because the writing was illegible and there were no letter formations. Furthermore, Mr. Anderson testified that in order to compare a questioned signature with a known signature, he would want at least 35 known signature documents. Mr. Anderson discredited Ms. Carlson by pointing out that the purported known signature that she relied upon in forming her opinion, consisted of just one signature, it was undated and of an unknown source.

“The fact that Ms. Carlson's opinion relied upon one document which purported to be the ‘known’ signature for comparison purposes, without requiring additional known signatures and the context in which they were given, renders her testimony less credible. Her analysis and opinions entirely hinge on whether she received an accurate ‘known’ signature from Gers. Her opinions are further undermined by the fact that she believes it highly probable that Lyle Tolsma also signed Gerald LeBeau's signature. Even from the untrained eye of this court, there is striking similarity from Gers LeBeau's signature on Exhibit 11 and Gers LeBeau's signature on Exhibit 15. It also bears mentioning that Gers signed the Permission to Search form (Exhibit 11) while he was in handcuffs. Approximately 6 hours later, Gers signed the Inmate Property Orientation Sheet. Notably, Agent Tolsma did not accompany Gers to the jail or was present when Gers signed this form.

“The court rejects the testimony of Ms. Carlson and determines that based on the testimony of Agent Tolsma and Agent Sheridan, the consent form was signed by Gers LeBeau.”

COMMENTARY: Expert Anderson was quite candid about his own limits of

competence and right on about a few of Carlson's violations of standards, without which it seems the client could not have been assisted.

The above opinion was submitted by the magistrate judge in a Report and Recommendation dated June 10, 2015, and the district judge accepted it in an Order dated July 02, 2015. The Order notes that at the hearing, "The government also impeached Carlson's qualifications." Unfortunately, we are not given the specifics of this impeachment. I believe they should be stated succinctly to assist later litigants and to provide the expert guidance on correction, whether correcting faulty information used to impeach or to correct oneself when the basis of the impeachment was factually correct.

190. *U.S. v Porter*, Nos. 15-cv-0458 RB/SMV, 10-cr-3404 RB (U.S. DC D. NM 2015)

COMMENTARY: This is another futile claim of insufficient assistance by counsel because of approach used towards Government's handwriting expert. Are trial and appeal counsel so dense that hardly any of them know to set forth a specific instance of ineptitude by trial counsel, the fine alternative that would have made things turn out better for defendant, and why it had nothing going for it in terms of good strategy? Do not any of them ever read why such post-trial motions and appeals are denied and so become better at their job? If the dominant trend plays out, having lost on a poor argument with the trial judge, the same poor argument will be used for *habeas corpus* motion and at every level of appeal up to the Supreme Court, then sometimes try to start all over again with the same old same. Yet no one ever contends this repetitive, failure-prone approach is itself ineffective to the Nth degree. It and similar futilities do keep defense counsel and court personnel gainfully employed.

191. *U.S. v Rivera and Garrett*, No. 13-CR-149(KAM) (U.S. DC E.D. NY 2015)

FBI document examiner Melanie Maness testified that the handwriting on a letter was "consistent with" Rivera's handwriting and had indented writings on it.

COMMENTARY: The fact that "consistent with" is one of those terms that means nothing specific and so can mean anything in general has been discussed elsewhere herein.

192. *Wood v Trammell*, No. CIV-10-0829-HE (U.S. DC W.D. OK 2015)

Habeas petition was denied. At trial David Parrett, document examiner in office of DA for Oklahoma County, OK, testified Wood had written a kite letter, and not his brother who had testified that he himself had.

Footnote 35 defines a kite letter as "a note sent from one inmate to another outside of the regular mail system. It is considered contraband (J.Tr. 4/1/04, 225-26)."

COMMENTARY: Wood was facing the death penalty and consecutive life sentences. It was not said which of the three sentences had to be satisfied first. However, if there were a rule the lesser sentence had to be served first and the most severe last, a prisoner could not be executed until having served the two or more life sentences.

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Almeciga v Center for Investigative Reporting, Inc., et al., No. 15-cv-4319 (JSR) (U.S. DC S.D. NY 2016)

After a Daubert hearing, Wendy Carlson's testimony as a handwriting expert for Plaintiff was barred as not satisfying requirements of Rule 702.

COMMENTARY: The original critical rulings by federal district courts as to the lacks of expertise in handwriting identification that have afterwards received nearly universal rejection, are given renewed authority. All eventually fruitless attacks once more bear fruit. Unfortunately, the rational and fair reasons for having Ms. Carlson disqualified long ago and frequently are missed. Instead, the entire field of her claimed expertise suffers the bewilderment it suffered originally from the claimed superiority of government examiners and their private cohorts. Unfortunately, the Court even quotes Jennifer L. Mnookin, "Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability," *87 Virginia Law Review* (2001). This gives a kind of authority to an author who masterfully avoided basing any opinion on fact or logic.

That Ms. Carlson has not been impeached to some degree in nearly every appearance as a forensic expert demonstrates that the limited competence of some cross-examiners is a major factor in the sad state of forensics testimony. Every document examiner should read this extensive case report closely and take its every judicial assertion to heart, because it is a cross-examiner's arsenal.

The first paragraph on the first page states the ruling we are concerned with: "In particular, the Court grants defendant's motion to exclude [Wendy] Carlson's 'expert' testimony, finding that handwriting analysis in general is unlikely to meet the admissibility requirements of Federal Rules of Evidence 702 and that, in any event, Ms. Carlson's testimony does not meet those standards." I take no issue with the final assertion specific to Ms. Carlson, only with the first general assertion. The *Daubert* issue covers almost a dozen pages in the section titled: "A. The admissibility of the proffered expert testimony under Rule 702."

Page 5 of my printout of the case report considers the exemplar signatures used by Ms. Carlson. The Court's first criticism is that she did not verify the authenticity of these. Two rules are misconstrued. First, the party calling the expert has the burden of establishing the genuineness and acceptability of the exemplars to the satisfaction of the court, meaning in practice that it is the attorney's burden. The case law of hundreds of years sets forth the methods how this can be done; additionally statutory law often sets forth these methods for a particular state or federal courts. The second rule is that the expert may not base her final opinion on her own previous opinion. The practical application here is that the expert may not authenticate the questioned signature on her own authentication of the exemplar signatures. Essentially it would entail a circular argument. At Internet Archive, <https://archive.org>, you can find my monograph on

exemplar writings which explains the criteria for their acceptability and other aspects of exemplar writings: “*Studies in questioned documents, Number Four: Exemplars: Genuine samples for comparison with questioned writings and documents.*” (San Francisco, CA, Handwriting Services of California, 1990.) All of my publications that I will cite henceforth are to be found open access at the same web site. On this point the Court could have ruled that plaintiff counsel had not carried his burden in proving the exemplars, and so the Court could simply have rejected the expert proffer.

Next, the in-court signatures that the Court had Plaintiff write are addressed. Unless my recall is faulty, it was later agreed these were written at a slow tempo and had scant resemblance to other exemplar signatures. When Ms. Carlson did not report back that they were unreliable exemplars because of these two factors, the Court again could have closed the hearing down with a rejection of the expert proffer based on Ms. Carlson’s failure to follow the long established standards reported in my monograph cited above.

If plaintiff counsel had had Plaintiff write exemplars for him and then if Ms. Carlson had relied on these, that would have violated the *post litem motam* rule, for which once more the Court could have simply rejected the expert proffer since the expert opinion was based on illegal material. See at Internet Archive my paper “*The Making of One's Own Exemplars; the Post Litem Motam Rule as Illustrated by California.*”

Next is discussion of specific failings relative to *Daubert* and the rules of evidence. To begin, the particular scholarly critics cited display two pervasive errors. First, they could not as proffered expert witnesses satisfy their own interpretation of the *Daubert* factors. Whenever appearing as expert witnesses and being closely, thoroughly challenged under *Daubert*, they have been either discounted in some way by the judge or disqualified. Second, they have their principal historical facts incorrect, some of which are discussed later.

The Court states how, failing to qualify as a scientific expert, a handwriting expert might still squeeze by as some kind of a more modest expert. It seems to me that in this case that was not available for Ms. Carlson since she used the word “scientific” to describe her work product.

Later the Court cites *U.S. v. Starzecpyzel*. Unfortunately the same flaw in logic as used in that case is used in the present one by concluding that one poor example of the profession is proof none in the profession is much better. Judge McKenna in *Starzecpyzel* made two other errors in logic. He said that, if document examination were a science, it would be junk science under *Daubert*, but it is not a science but a technical skill. “Junk science” minus “science” does not leave “technical skill” but “junk.” The second error in logic is that, since the certification chair of American Board of Forensic Document Examiners demonstrated no scientific quality in her practice, the evidence proved all document examiners were unscientific. No. She had clearly demarcated her kind of examiners from the rest of them, so she had only proved she and those she approved for ABFDE certification were unscientific. There was thus no evidence against any of the

others. And the same logic applies in this case. Ms. Carlson only proved she individually was in want.

At the bottom of page 5 begins reporting of a common historical mistake. For a more extended critique of historical and other mistakes by scholarly critics of forensic practice, see my monograph, *"In the Exercise of Ignorance: Replies to the Misconceptions and Misunderstandings of the Critics of Forensic Handwriting Expertise."* This monograph also explains some points the critics have correct and why. A legal scholar who has done much to modify my views and appreciation for the essential problems in document examination and their potential solutions is Professor D. Michael Risinger. Doctor Carole Chaski has also been a gracious guide in resolving perplexity.

Professor Mnookin's journal paper cited at the beginning of this commentary was relied on by the Court and so deserves close consideration by us. Summarily, it lacks in correct logic and historical accuracy. Let us consider only the most relevant and errant of these regarding admissibility of handwriting expert testimony before the early 1800s and forward. Older English case law does mention expert evidence as to handwriting. It was always admissible in ecclesiastical courts of England. As an example of civil practice, in the case *Folkes v. Chadd*, 3 Doug 157, 99 ER 589 (1782), affirmed 3 Doug K.B. 340, 99 ER 686 (1783), it is stated at 99 ER 590: "I cannot believe that where the question is whether a defect arises from a natural or artificial cause, the opinions of men of science are not to be received. Handwriting is proved everyday by opinion...."

We can turn to a text of the law of evidence and find supporting information. The book by Thomas Peake, Esq., *A compendium of the law of evidence. From the last London edition with additions and the American cases in notes*, Josiah Randall, Philadelphia, is available open access in various editions at Internet Archive. The 1812 edition explains the restriction on handwriting expert evidence in civil courts of England but also when rarely admissible. The fact of standard admissibility in Ecclesiastical Courts is stated with the author's clear disapproval. Lord Kenyon is given as the main authority for excluding it for experts, though not for qualified lay witnesses or jurors, judges' reluctance for the latter being gradually whittled away. Mnookin and other current legal scholars say there were no handwriting experts back then. However, the ones used in ecclesiastical courts and rejected by civil courts had to come from somewhere. The main source was the Royal Postal Service which had employees called inspectors of franks.

Now to a very brief reply to a type of criticism of handwriting expertise the Court uses as partial basis for its ruling. True, Osborn firm of New York made a mistake on Clifford Irving's alleged biography of Howard Hughes. However, Albert S. Osborn died in 1946, so it is straining a bit to give this as an argument against him. Even the finest of us are not immune to mistakes. Later Ordway Hilton and others authenticated the Hitler diaries, but it was document examiners who made the correction in every such case I know of. I allow that there may be relevant cases I may not know of.

Now to the case law that the decision cites to support excluding Ms. Carlson. The

supportive cases are all at the trial level, while federal appeal and state appeal and supreme courts have universally come down in favor of admissibility of the discipline. Individuals might be found inadmissible. A good example of the latter is the other examiner the decision mentions, Curtis Baggett, who was Ms. Carlson's teacher. To my knowledge he has been found inadmissible by more judges than any other document examiner I have documentation for. Yet he keeps being admitted, which itself is mute testimony to the insufficient investigative efforts of far too many trial attorneys. Some critics of forensic practice have done us all a serious disservice by use of fallacious logic, false history, and questionable interpretations of *Daubert*, not to mention a rather unscientific notion of science.

As to applicable case law on handwriting expertise, my case law database has only 33 post-*Daubert* decisions by the Second Federal Circuit Court of Appeals. Seven merely mention handwriting. Eleven mention a handwriting expert was somehow involved, mostly as witnesses, as in *U.S. v Badmus*, 325 F.3d 133, 2003 U.S. App. LEXIS 5919 (2 Cir 2003). Only one had a formal statement that a handwriting expert was admissible over objections, *U.S. v Brown*, 2005 U.S. App. LEXIS 22703, 152 Fed. Appx. 59 (2 Cir 2005). In another a challenge was not ruled on since other rulings pre-empted the issue. No exclusion of an expert was indicated in any case. In one case conviction was reversed and remanded precisely because trial counsel did not consult a handwriting expert; *U.S. v Tarricone et al.*, 996 F.2d 1414 (2 Cir 1993). The other Second Circuit cases in my database address other issues. Most other Federal Circuits provide a respectable number of case reports supportive of the reliability and admissibility of the expertise itself, though individuals are still subject to the tender mercies of cross-examiners, though far too often the examiner is beneficiary of ineptitude in investigation and of ill planned and executed attack at trial.

It would take a modest monograph to demonstrate just the basic technical inadequacies of the so-called ACE-V method. The very brief description of Lynn Bonjour's methodology in footnote 3 of *United States of America; Government of the Virgin Islands v Velasquez*, 64 F.3d 844, 33 V. Is. 265 (3 Cir 1995), has the most basic essentials of any proper methodology. To quote the entire footnote:

"Ms. Bonjour described the procedures that she, and other experts in the field of handwriting analysis, employ as follows: First, the expert determines whether a questioned document contains a sufficient amount of writing and enough individual characteristics to permit identification. After determining that the questioned document is identifiable, the expert examines the submitted handwriting specimens in the same manner. If both the questioned document and the specimens contain sufficient identifiable characteristics, then the expert compares those characteristics, e.g., the slant of the writing, the shapes of the letters, the letter connections, the height of letters, the spacing between letters, the spacing between words, the 'i' dots and 't' crosses, etc. App. 136. After making these comparisons, the expert weighs the evidence, considering both the similarities and differences in the handwriting and determines whether or not there is a

match.”

Unfortunately, these days writers of alleged standards avoid the chore of first determining whether a writing is identifiable and what precisely identifies it, merely by asserting that every person’s writing is unique, implying pre-established personal identifiability. That way an accommodating expert can give any opinion for the satisfaction of any client. As for ACE-V, it is terribly tautological since comparison, evaluation and verification are all aspects of analysis, which properly involves far more work. But why go to all that hard work when malarkey, machinery and showmanship will get more money?

As for experience proving expertise, it is based on the principle that one is inexperienced till experienced, and so one must be inexperienced and inexperienced in order magically to become experienced and thus expert. How can the non-expert’s experience when still inexperienced make one an expert? And how much experience while a non-expert is required to make one an expert? And how many more years or months or days or moments of experience will make one expert more credible than another? If one has two experts with one year experience each, do they equal one expert with two years experience? Or outweigh the other if together they have more years experience? Experience is never a rational measure of expertise unless it can be determined what kind of experience makes for a particular expertise, and that the proffered expert has precisely that kind of experience in the right amount. But how can such nebulous matters be proven?

The ruling says disinterested folk must read the writings in the discipline for an objective evaluation. But people only read what they have some interest in reading. It is asserted that there is no study establishing use of slant as helpful in identifying handwriting; nor is there a study establishing that height can help identify a person. Nor is there any scientific study that water will flow downhill if given a fair chance. I submit this thought: If a physical observation is correct, it is objective. So look. If it is not correct, it is subjective. So look. It is asserted that an endeavor needs an academic basis, meaning do it at a university. That is why, one must logically assert, there was no science until the Catholic Church established universities during the Middle Ages. A corollary would be: Aristotle, Archimedes, Euclid, et al., were not scientists. Same point of view, but different viewing point:: The Church certainly initiated the full blossoming of western science, but only an existing plant can be brought to flower.

The case report has much to support the ruling, though often the reason is not right on target. There are various discussions of disguise versus imitation. The scant data given supports disguise in the court-ordered exemplars. Research going back 100 years or so shows that in imitation conspicuous features match the authentic writing while inconspicuous features do not. In disguise it is the opposite. Thus the scant data given us supports deliberate disguise in the ten court ordered exemplars. That Ms. Carlson either did not know this or kept it from the judge shows she was rightly disqualified. It also shows why collected exemplars existing before the dispute arose are always advisable along with any court ordered or other requested exemplars. Indeed, collected exemplars

are of greater value overall.

Handwriting experts routinely fail to (or are unaware they must) establish the suspect writer's unique complex of significant identifying features, and that this should be done for all the reasonable suspects in the instant case. The critics are correct that it should be a routine requirement that all reasonable suspects be equally investigated. To the extent this is not done, the final opinion becomes less probable. I suspect so many experts reject this because they do not know how to do it, while litigants are reasonably reluctant to spend a lot of money. Footnote 8 mentions "disgraced pseudo-sciences." Each one mentioned began life within the bosom of a recognized and presently respected science but is blamed on others by the same science.

There are other pertinent observations one could make, but a Latin proverb says "satis satisfacit," literally, "enough makes enough," which is given in English as "enough is enough." Additionally, the most useful of the omitted critiques are provided elsewhere in this text.

193. *Balimunkwe v Bank of America, N.A., as Successor to First Franklin Financial Corp., et al.*, No. 1:14-cv-327 (U.S. DC S.D. OH 2016)

Plaintiff's handwriting expert, Curtis Baggett, was ruled unqualified upon motion by Defendants. He sought to substitute Wendy Carlson for Baggett. For legal reasons this was not permitted.

COMMENTARY: Though the case report is not published and is itself not precedential, it quotes and discusses ruling cases. Thus, the case is recommended for study when one faces an opponent proposing such a substitution.

Defendants could have pointed out that Baggett and Carlson either are or once were associates. For example, from her web site we read:

"Client Testimonials; ...found America's handwriting experts, Curt Baggett and Wendy Carlson on the web. I am a firm believer in the adage ..." And the same under: "Words of praise from previous clients."

Her web site lists three "experts" under whom she studied: Bart Baggett, Robert Baier, and Don Lehew. A 2010 CV for Carlson gives these same three with "C. L. Baggett" listed first, who is none other than Curtis Leo Baggett, the Curtis Baggett of this case. Why does she now exclude him from her web site as a teacher? Maybe it could be a fruitful routine to ask any handwriting expert what teachers or studies one had in forensic handwriting analysis who are not on the CV. You can see the 2010 CV by entering into your Internet browser: "Wendy Carlson Questioned Document Examiner Letter February 8, 2010 Subject: Aga Khan."

194. *Flow v LaValley*, No. 14 Civ. 3513 (KPF) (JCF) (U.S. DC S.D. NY 2015)

COMMENTARY: At trial a handwriting expert opined as to the similarities between the robber's demand notes and Flow's handwriting.

195. *Garza v Young*, Civil Action No. 6:15cv808 (U.S. DC E.D. TX 2016)
Testimony by a handwriting expert was received.

196. *Kelly v University of Pennsylvania Health System*, Civil Action No. 16-618 (U.S. DC E.D. PA 2016)

COMMENTARY: Testimony of handwriting expert received authenticating denied signature.

197. *McDonough v Smith, et al.*, No. 1:15-cv-01505 (MAD/DJS) (U.S. DC N.D. NY 2016)

Following an alleged voter fraud case, Alan T. Robillard was sued by McDonough, along with many others. Robillard had concluded and testified that McDonough's handwriting was on forged voter documents. The complaint against him was dismissed since all his work and testimony in the case had been absolutely privileged.

COMMENTARY: If an examiner of Robillard's standing can be sued, none of us can afford to presume we are immune. I was named in a suit once although I had a letter from plaintiff's civil attorney that my factual opinion was correct. Plaintiff was suing me for the emotional trauma caused her. I guess some folk are exceptionably upset when their forgery and fraud are exposed. A reasonable cause and effect connection, but hardly a reasonable cause to blame someone else for one's own guilty conscience. The insurance company paid her and her attorneys off since in the circumstances that was the more profitable course of action.

198. *Middle v Green and Attorney General of Maryland*, Civil Action No. PWG-15-3333 (U.S. DC D. MA 2016)

COMMENTARY: Diana Lawder, a forensic scientist, testified Mohamad Middle had written threatening notes to his former wife.

199. *Miller v Ruest, et. al.*, Case No. 4:15-CV-1754 (U.S. DC M.D. PA 2016)

COMMENTARY: Testimony was received from handwriting experts as to authenticity of signatures.

200. *In re Mortgage Electronic Registration Systems (Mers) Litigation. Robinson v GE Money Bank, et al.*, MDL No. 09-02119-PHX-JAT, CV No. 10-630-PHX-JAT (U.S. DC D. AZ 2016)

COMMENTARY: Plaintiff's handwriting expert agreed that her signature was genuine, so defendants were granted summary judgment on the forgery issue.

This is a robosignature case. It seems to me to be another case illustrating how robosignature is a safe way to cheat people out of their real property whether or not any cheating went on in this case. Discovery is frustrated by layers of transactions in

transferring interests between lenders and by plaintiffs' inability to find out what really went on in the masses of document creations and notarizations, along with making ever more layers of transactions and new documents to defend defendants from discovery of the truth of the matter. All this might be only an illusion of mine, but how could any of us mere mortals ever untangle the complexities created by the robosignature industry? Could they themselves be able to give a clear, complete and accurate disclosure of their processes in the matter?

201. *Popovic, et al., v Spinogatti, et al.*, No. CV-15-00357-PHX-JJT (U.S. DC AZ D. 2016)

COMMENTARY: Handwriting expert testified to authenticity of a signature.

202. *U.S. v Pioch, et al.*, Case No. 3:14CR403 (U.S. DC N.D. OH 2016)

COMMENTARY: The very brief decision and order ends with: "ORDERED THAT: The motion of defendants Pioch and McKnight to exclude opinion testimony as to handwriting (Doc. 161) be, and the same hereby is, denied without prejudice to the right of all defendants to challenge the adequacy of the government's foundation as to such testimony."

203. *Western Alliance Bank v Jefferson, and related actions*, No. 2:14-cv-0761 JWS (U.S. DC AZ D. 2016)

COMMENTARY: "Jefferson's handwriting expert, William Flynn ('Flynn'), concludes 'to a high degree of probability' that Jefferson's signature was forged on the Access Documents."

B. FEDERAL TRIAL COURTS OTHER THAN DISTRICT COURTS.

1994

204. *Bybee v Commissioner of Internal Revenue*, 72 TCM 607 (CCH 1996); on remand from 29 F.3d 630 (9 Cir 1994)

Tax Court found, regarding signatures on Form 872 which Petitioners denied, that they "completely failed to satisfy their burden to prove that the signatures...[were] forgeries." Court said they appeared "to be identical" to signatures on their joint tax returns. There is no statement that expert testimony was offered.

COMMENTARY: One source indicated a handwriting expert was admitted in this case, but case reports I have seen so far do not indicate this.

1997

205. *In re Apex Intern. Management Services, Inc.*, 215 BR 245 (Bankr. Ct. MD FL 1997)

Fred E. Johns, as the debtor corporation's former president, moved for relief from a settlement agreement. Among the evidence he presented was the following at page 248:

"19. Testimony was also given by Don O. Quinn, a forensic document examiner. Mr. Quinn testified that the 'Fred E. Johns' signature on the December Agreement was not originally written on that document, but is a photocopy from the same original source as Mr. Johns' signature on the September Agreement. (Feb. 27, 1997 Tr. at 53.) Mr. Quinn further testified that he believes slipsheeting occurred in this case. Id. at 54."

Johns' motion was denied because of his own delay in pursuing it and because earlier he had had his attorney argue for acceptance of the December Agreement.

COMMENTARY: Sometimes, even in a court of law, one cannot have it both ways.

2002

206. *Commodity Futures Trading Commission and Moratzka v Nauman*, BKY No. 009-45285-NCD; ADV NO. 01-4272-NCD. (US Bank. D. MN 2002)

SWGDOC lists this as a case where handwriting identification was admitted unconditionally. I have not found a case report.

207. *In re Sorrell; Sorrell v Electronic Payment Systems, Inc.*, 292 BR 276 (Bankr. Ct. ED TX 2002)

"The Sorrells testified that they believe the initials and signatures of the November 3, 1995 documents to have been forged manually or by means of an electronic copier. Their opinion is that page four of the Deed of Trust executed on October 18, 1995 was removed and used to create the false signatures on the November 3, 1995 documents. There is no evidence that such replacement occurred beyond their speculation and the missing page. Defendant, of course, denies that the November 3, 1995 documents were forged. At trial, Linda James, a board certified document examiner was called as an expert witness to discuss whether the signatures were authentic and the issue of whether the signature of Elbert Dixon, which appears on a Warranty Deed, also apparently executed on November 3, 1995, granting Avery Sorrell and Vergie Sorrell the homestead property known as 1019 S. Holly, Sherman, Texas, was an authentic signature. Plaintiff's Exhibit 23. Defendant's D-O. Ms. James testified at length and in great detail regarding her methods and her conclusions in assessing the veracity of signatures on questioned documents, matching known, verified signatures against contested signatures. James testified that the signatures on the November 3, 1995 documents were the Sorrells'. However, the Court was unable to give her testimony sufficient credence to meet the threshold of persuasion when such testimony was juxtaposed to Avery Sorrell's

testimony, Elbert Dixon's testimony and certain elements of Vergie Sorrell's testimony. James' expert testimony dwelled in great detail on the methodology used in authenticating signatures. She explained in detail the points of the signature that she considered the tell-tale markings that would always appear in an authentic signature but that could not be duplicated in an attempted forgery. She testified that all signatures contained these tell-tale markings and that it was simply a matter of determining the basic characteristics of a signature and checking for those basic characteristics in the signature to be authenticated. The problem with her expert testimony was that when it came to applying those tell-tale markings to the actual signatures in question she failed to explain where they were and how the markings on the questioned signature matched the known samples of the Sorrell's signatures. She did not demonstrate the similarities to the Court but simply offered the conclusion that the signatures on the document dated November 3, 1995 were authentic.[7] The Court finds that the evidence supports Debtors' version of the events: the documents dated November 3, 1995 are falsified."

COMMENTARY: Yes, the quote appears as one paragraph in the source I used. I reproduce the extended discussion of James' testimony to make one key observation. Given the detailed description she gave of her methodology, one is hard put to entertain a reasonable probability that she did not employ it and observe all that she described as what is to be observed and not make notes of it all. I infer from this that the attorney conducting the direct examination cut it short and so cut the legs off his own case. Unfortunately, it is always the witness that looks bad in a summary discussion of the testimony. In this light, I recognize I might have been a bit too harsh in this collection when discussing some testimony. If anyone offers demonstrated correction, I will gladly make corrections in future editions.

2003

208. *In re Santaella*, 298 BR 793 (Bankr. Ct. SD FL 2003)

At page 797: "2. Linda Hart — Ms. Hart, a forensic document examiner, offered expert testimony that the purported signatures of 'Hans Bauer' and 'Jan De Vries' on the documents that she reviewed (except for the 'Hans Bauer' and 'Jan De Vries' declarations) were written by the Debtor. She testified that she reached this conclusion with 'the highest level of certainty.' May 8, 2002, Transcript at page 79 (hereafter 'Tr. at ____'). She also testified that the purported signatures of 'Hans Bauer' and 'Jan De Vries' on the three notarized declarations were actually what the experts call 'drawings' made by someone attempting to simulate the Debtor's 'Hans Bauer' and 'Jan De Vries' signatures."

COMMENTARY: Some call low skilled writing "drawing," but never a high skilled drawing "writing."

209. *In re Mary Jo Townsend, Debtor; Townsend v Morequity, Inc.*, 309 B.R. 179 (US Bankruptcy Ct. W.D. PA 2004)

Thelma Greco was handwriting expert for debtor/plaintiff to prove debtor's signature on a mortgage had been forged by her husband. J. Wright Leonard was handwriting expert for defendant and testified that the mortgage signature was genuine. Morequity moved that Greco's testimony be stricken under *Daubert*, the motion was granted, and Debtor's signature on the mortgage was found by the Court to be genuine.

Greco had completed Andrew Bradley's basic course, but the Court found that only certified her as having the foundation to become qualified. She was a member of National Association of Document Examiners, had not completed a course offered through NADE and was not a candidate for board certification by NADE. Leonard, on the contrary, was board certified by NADE and sat on its Board of Directors. Greco used a "cross check" system which was not peer reviewed nor generally accepted in the field, while Leonard testified she had never heard of "cross check" until she read Greco's report. Greco was found unqualified, her methodology not meeting *Daubert* and other relevant criteria, and her testimony was stricken. Leonard was found credible and her opinion supported by non-expert evidence.

COMMENTARY: Greco had not done her homework nor showed familiarity with things of common knowledge among document examiners, such as pertinent ASTM standards. To Leonard's credit, comments attributed to her regarding Greco's work were all objective and technical. I do not know of any course of study offered by or through NADE. The organization does provide its members with data on current courses, conferences and other educational events offered by any other organization. It has never officially endorsed or criticized any of these things. Its certification testing is entirely objective, measuring the candidates' competence and knowledge without any prior or prejudicial requirement that such competence or knowledge be acquired in any particular way or with any particular organization.

The system used by Greco is probably that described in Doris M. Williamson's and Antoinette E. Meenach's book, *Cross-check system for forgery and questioned document examination*, Chicago, Nelson-Hall, 1981. The text has some good ideas, which would be found in any standard, recognized text. But the system itself is, in my opinion, highly flawed. A document examiner would want to collect such texts in order to reply knowledgeably and objectively to one employing such creative, but out of the mainstream and unreliable, methods. Other authors have made up their own unique theories and methods along with a peculiar terminology one would not recognize from standard usage by the recognized authorities. The authors of such systems could, I suggest, be drastically impeached from their own creations, but an attorney would have to consult an expert who has an extensive collection of both standard and non-standard texts and who has previously studied them. Also, in affidavits and reports I have cited journal articles

authored by opposing experts that roundly contradict their current opinions. So an expert ought also have an extensive collection of periodical publications in one's field with a computer database to access it all. That is why I compiled and offered to my colleagues *QDE Index*.

SWGDOC lists this case but apparently did not have the complete case report since the information about Leonard was not included.

2005

210. *In re Thorn and Thorn, Debtors; Thorn and Thorn v Countrywide Home Loans, Inc.*; U.S. Bankruptcy Court, Northern District of Texas, Sept. 19, 2005

COMMENTARY: The court heard testimony from "Curtis Baggett, a handwriting expert," but it is not stated for which party he testified. The court found that the debtors, Walter and Marilyn Thorn, did not testify truthfully when they stated they did not sign the Note and Deed of Trust in question, nor that two checks were stolen and not signed by Marilyn Thorn.

2008

211. *In re Claybrook; Bell v Claybrook*, 385 BR 842 (Bankr. Court, ED TX 2008); affirmed, *Claybrook v Bell*, Civil Action No. 4:08-CV-205, U.S. Bankruptcy Court No. 04-44541, 05-4013. (US Dist. Ct. ED TX 2008)

US District Court:

"Claybrook alleged at trial that her signature on the promissory note was forged by Bell, a claim directly refuted by the testimony of Bell's handwriting expert, Linda James, who concluded that the disputed signature was in fact Claybrook's. The bankruptcy court, finding Ms. James's testimony more credible than Claybrook's, concluded that the representation was made. This court cannot conclude that the bankruptcy court's finding was error."

COMMENTARY: Ms. James is a diplomate member of NADE and served as president.

2009

212. *Hammen and Hammen, Debtor(s). Bain Estate v Hammen and Hammen*, 399 B.R. 867 (United States Bankruptcy Court, S.D. Iowa., 2009)

The Court accepted Barbara Downer's expert opinion that Ms. Bain signed the disputed document using print, whereas her exemplar signatures were cursive. However, the inferences Hammen and Hammen wanted to make from this were rejected.

COMMENTARY: Ms. Downer is a member and former president of NADE. She showed exceptional mastery of the graphic motor sequence to arrive at a reliable, credible

and acceptable opinion of “highly likely” in a situation where most handwriting experts confess to inability even to make rudimentary comparisons.

213. *In re Lavender; Manheim’s Pennsylvania Auction Services, Inc., v Lavender*, Bankr. Court, Case No. 806-70091-ast, Adv. Proc. No. 07-1172-ast. (ED New York 2009)

“Manheim was not able to produce the original 1998 Financial Statement signed by Mr. Lavender. Mr. Lavender hired an expert witness, Jeffrey H. Lubner, to testify....

“Based on his analysis of a copy of the purported 1998 Financial Statement that he examined, Mr. Lubner concluded that he could not reach an opinion on whether the document was a genuine copy or a forgery by simulation. In his report [Tr. Ex. H], Mr. Lubner stated: ‘The poor quality of the submitted Q1b [questioned document] precludes any conclusion concerning authorship by [Debtor].’

“Although Mr. Lubner noted certain concerns, he never expressed an opinion that the 1998 Financial Statement was a forgery by simulation or otherwise, or was a ‘cut-and-paste’ job.”

Due to the dubious credibility of Lavender and his contradictory statements, the Court found in favor of Manheim.

COMMENTARY: Footnote 2 says: “At trial neither Mr. Wynn, Mr. Lavender, nor Mr. Lubner commented on the facsimile transmission header at the very top of both pages of Tr. Ex. 21: ‘Sep 09 98 11:15a LAVENDER AUTO SALES (516) 928-7702.’ An inference could be drawn that the facsimile transmission header on Plaintiff’s Trial Exhibit 21 establishes that the 1998 Financial Statement was faxed to Manheim by Mr. Lavender. However, because no witness testified as to the meaning or significance of this fax header, this Court does not draw this inference.”

The rule is that the fact-finder may make an independent comparative examination of disputed handwriting with or without aid of a lay or expert witness. I wonder if that might extend to other aspects of the document. For sure the bankruptcy judge did not think so, so it most probably does not. Still it would be an interesting issue to be pursued by a legal scholar or a desperate trial lawyer.

214. *In re Youngblood; Marshall, et al., v Youngblood*, Case No. 07-70072, Adversary No. 07-07014. (Bankr. Ct. SD TX 2009)

Plaintiffs offered the testimony of Linda James: “Ms. James is a certified, published forensic expert with significant experience serving as an expert witness in civil and criminal cases. Ms. James compared ‘known’ signatures of Ms. Sawyer and Ms. Youngblood to the signatures on the disputed checks. ‘Known’ signatures were signatures pre-dating the disputed transactions and taken from documents whose authenticity was not contested. Ms. James attempted to identify ‘characteristics’ unique to the known signatures and then examined the disputed signatures for the same ‘characteristics.’ Based on the number and quality of ‘characteristics’ found in the disputed signatures, Ms. James classified the disputed signature along a classification

scheme that varied based on the probability of the forgery.

“On cross-examination, Ms. James made several important admissions. She admitted that she examined only copies rather than original documents. She admitted that analyzing originals is preferred and more accurate. Ms. James also admitted that the ‘known’ signatures and all other documents were provided solely by Plaintiffs’ attorney. Ms. James admitted that she had not examined the disputed power of attorney document. Most importantly, Ms. James admitted that she was not told Ms. Sawyer’s age or that she had suffered a stroke. Ms. Holdridge testified that Ms. Sawyer had suffered a stroke in April of 2002, just before the disputed transactions. Ms. Holdridge also testified that Ms. Sawyer had someone else write her checks after suffering the stroke. Ms. James admitted that health conditions could affect a signature. All the ‘known’ signatures of Ms. Sawyer given to Ms. James predated Ms. Sawyer’s stroke.

“The Court need not make a determination of Ms. James’s credibility or the reliability of her findings. Assuming the Court accepted Ms. James opinion as true, a crucial question remains unanswered: did Ms. Sawyer give Ms. Youngblood the authority to sign her name to the checks?”

The Court concluded that plaintiffs did not disprove Youngblood’s testimony that Sawyer had given such authority. They had the burden to do so because they had pled conversion, theft, common law fraud, and breach of fiduciary duty.

COMMENTARY: I quoted at length because courts usually do not provide such perceptive summary, yet comprehensive description, of the expert’s testimony. We are at the mercy of the ability and/or willingness of our clients to provide sufficient exemplars and information for the case at hand. Still, we should ask, and even cajole if need be, the client to supply sufficient and proper materials. Unfortunately, we might be flying blind and not know till too late that we have been set up by our own client.

Ms. James is a member of NADE.

2010

215. *Jordan and Jordan v Commissioner*, 134 TC 1 (US Tax Court 2010)

Handwriting expert Richard Orsini testified that the wife had signed the husband’s signature on a Form 900. However, due to countervailing evidence, the court found the signature valid. Even if not, other considerations prevented Jordan from reneging on an agreement under which he had already made payments.

COMMENTARY: Mr. Orsini is a certified member of NADE.

2011

216. *In re Dwek; Dwek v Sun National Bank and consolidated case*; Case No. 07-11757, Lead Adversary No. 07-1616, Consolidated Adv. No. 07-1697. (Bankr. Ct. D. NJ 2010); *In re Dwek, Dwek, et al., v Sun National Bank, et al.*, Bankruptcy No. 07-11757 (KCF),

Adv. Proc. No. 07-1616 (KCF), No. 07-1697 (KCF), Civil Action No. 10-3770 (MLC). (US Dist. Ct. D. NJ 2011)

“At trial, the Bank presented the testimony of J. Wright Leonard who was qualified as an expert in handwriting analysis. Among other qualifications, Ms. Leonard is board certified by the National Association of Document Examiners and the American Board of Forensic Examiners [Ex. D50]. The Dweks did not present any expert testimony in rebuttal. Ms. Leonard concluded that the signature on the Mortgage was that of Joseph Dwek.”

COMMENTARY: The District Court affirmed the Bankruptcy Court’s decision and added a few interesting details to Leonard’s testimony, such as a Hebrew symbol appeared on documents that Leonard examined, though she could not identify the writer of the symbol.

217. *Harmon, Debtor; Whitesell v Harmon, Trafelet and Wachovia Bank and consolidated cases*; Case No. 08-9999-AJM-7, Adversary Proceeding No. 08-50543. (US Bankruptcy Ct. S.D. IN 2011)

At pages 8-9 the handwriting expert testimony is stated: “There appears to be no dispute that Whitesell did not sign the Note and Mortgage. Handwriting expert James Steffen testified that the comparison of Whitesell’s handwriting exemplar with the signature on the Note and Mortgage established that it was not Whitesell’s signature on the Note and Mortgage. Steffen further opined that Whitesell’s name on the Note and Mortgage appeared to be signed by Trafelet and that it was ‘disguised’ writing in that it was written in a stunted, slow manner, indicating that Trafelet or whoever signed Whitesell’s name attempted to hide his true identity.”

COMMENTARY: The opinion as reported is unusual in that normally an expert would say it is not disguised writing but an imitation that explains the traits allegedly observed. The decision in *Gill v Gill*, among Indiana appeal court cases *infra*, might explain the apparent perplexity of the witness.

218. *In the Matter of Jason Lee Manwarren, Debtor. Wells Fargo Auto Finance, Inc., v Manwarren*, Case No. 09-33752 HCD (US Bank. N.D. Ind. 2011)

Tamara Kaiden testified as a handwriting expert for Wells Fargo Auto Finance that Manwarren had signed the sales slips for the automobile in question. After hearing the evidence and arguments of the parties, at page 8 the court stated:

“The defendant challenged the expert’s opinion by pointing out counter-examples of differences between his known signature on his social security card and driver’s license and his disputed signatures. The expert’s response, that the distinctions were merely variations in his handwriting, was credible. Indeed, the court found the expert’s detailed analysis of the handwriting samples to be professional, thorough, and worthy of the court’s confidence. It found that the defendant’s challenges to her testimony were shallow distinctions that failed to convince the court of the flaws in the expert’s

methodology. The defendant himself admitted the differences in his signatures when he compared the one he just had written with the one on the Odometer Disclosure Statement. The court found the expert to be a more credible witness.”

COMMENTARY: Considering the ruling in *Kruzek v Estate of Kruzek*, 2012 IL App, where Kaiden was not permitted to testify since she had not described any hands-on training, her performance of a hands-on methodology carries the day for her. The two cases together force us to face the difficulty of balancing some preliminary evidence, that the expert’s testimony on the fact at issue will be worth the time, with the fact that the ultimate test is the quality of the testimony on the fact at issue. There are situations where the best we can do is go with the way that causes the least unfair harm.

2012

219. *In Re: Calvin J. Chapman, Chapter 7 Case, Debtor. Helena Chemical Company, et al., v Chapman*, Case No. 11-83991-JAC, A.P. No. 12-80002. (US Bankruptcy Ct, N.D. AL 2012)

“Steven G. Drexler, Plaintiffs’ questioned document expert reviewed the 2007 Monsanto Technology Stewardship Agreement, the 2008 FarmFlex Seed Financing Statement, and the 2008 FarmFlex Loan Agreement, and determined that the signatures purporting to be those of Joseph C. Chapman were not authentic when compared to Joseph C. Chapman’s known handwriting exemplars. (Doc. 39-6). Mr. Drexler further opined that the signatures appearing on these Monsanto documents were consistent with the Debtor’s known handwriting exemplars, leading him to the conclusion that Joseph C. Chapman’s signature on the Monsanto Credit Documents at issue were, in fact, signed by the Debtor. Debtor has provided no substantial evidence to contradict Mr. Drexler’s conclusions.”

COMMENTARY: It is a tactical error to leave expert testimony unchallenged, particularly when one knows the opposing expert is correct. If one has made the strategic error of going to trial on a losing battle, one should avoid the tactical error of not contesting a critical issue.

220. *In re John L. Russo, Individually and as sole shareholder of CustomSignatureStamps.com Inc. Debtor. American Legal Commercial Printers, Inc. Douglas J. Russo, Plaintiff, v John L. Russo, Defendant*. Case No. 10-11576 K, AP No. 10-1110 K. (US Bankruptcy Ct. W.D. NY 2012)

“34. The Court finds that Ms. [Joan] Winkleman’s expert testimony is persuasive, and accepted for the purpose offered - ‘It is “highly likely that the hand that signed Douglas’ name on certain key documents (discussed later) was not Douglas’ hand.”’ However, her testimony needed to be tied to Douglas’ testimony, since he stated which were his genuine signatures so that she properly used them for comparison.

COMMENTARY: The proper spelling on the expert’s name is “Winkelman.” She

is a member of NADE. Douglas was the son, and John, his elderly father, had defrauded him.

2013

221. *In re Jerzy Adas and Teresa Szmazinska-Adas, Debtors; Rutkowski v Adas*, 488 B.R. 358 (US Bank. Ct. N.D. IL 2013)

“Forensic document examiner James Hayes testified as an expert witness that in his opinion, Rutkowski did not sign the Sworn Owner's Statements submitted to Delaware Place Bank by which an additional \$256,500 was drawn down from the construction loan. Pl.Exs. 15-20. Hayes did not conclude that Adas forged Rutkowski's signature, only that someone forged it.

“Hayes' testimony was interesting, but ultimately no findings of fact are required regarding his conclusions. Although Rutkowski urges the court to use common sense to find that either Adas or Darski forged Rutkowski's signature, it is inappropriate to do so. Hayes concluded that there were not sufficient characteristics in the handwriting exemplars to render an opinion as to whether Adas was the author of the questioned signatures. On the question of whether Adas forged Rutkowski's signature, the court will not substitute its judgment for a handwriting expert's.”

COMMENTARY: This is a cautionary tale for anyone looking for a business partner whom one will trust blindly. One might end up being robbed blind.

222. *In re Ronald Jefferson Davis, Jr., Debtor. Taylor and Taylor v Davis*, 494 B.R. 842 (US Bank. Ct. D. SC 2013)

Davis acted in pro per and solicited a handwriting expert's opinion by hearsay:

“98. Defendant asked Andrew Taylor whether a handwriting expert had reviewed the purported signatures of Plaintiffs on the May 2008 and August 2008 guarantees. Andrew Taylor responded that a handwriting expert, Mr. Carney, reviewed their signatures. When Defendant asked about Carney's opinion, Andrew Taylor testified that Carney's opinion was what appear to be Andrew Taylor's signatures on both the May 2008 and August 2008 guarantees were simulations. When Defendant asked about Carney's opinion with respect to Naomi Taylor's purported signatures, Andrew Taylor testified Carney's opinion, with the highest confidence, was what appear to be her signatures on both guarantees were forgeries.”

From the following among Defendant's motions that were denied it also appears that Carney testified in person:

“2. Defendant's motion entered February 14, 2013, to exclude Carney's testimony, deposition, transcript, and report and motion entered March 6, 2013, to reconsider this Court's Order denying Defendant's motion for a protective order regarding Plaintiffs' deposition of Carney are moot.”

COMMENTARY: This appears to be another case where a defendant in pro per

could rightly appeal on the basis of ineffective assistance of counsel. I have not come across a case of a litigant in pro per attempting to sue himself for legal malpractice.

223. *In the Matter Of: Debbie L. Gunsteen, Debtor. Harris N.A. v Gunsteen*, 487 B.R. 887 (US Bankr. Ct. N.D. IL 2013)

James Hayes was handwriting expert for Harris N.A. Hayes testified Gunsteen had falsified a line in an application for a loan, disguising her writing. However, all the information provided was true, while the bank failed to ask for correction at the time of the loan if it thought there was falsification. The court considered Hayes' opinion speculative. The \$1,000,000 debt sued on was found to be dischargeable.

COMMENTARY: Hayes did qualify his opinion, while the cogent bases for rejecting it were matters outside a document examiner's area of expertise. Still, however unfairly, any embarrassment stays with the named expert. One of several failures in the method of examination was that the bank only asked that the handwriting of debtor and her husband be examined as possible writer of the disputed entry, not that of any bank employee. The report indicates Hayes worked hard on the case.

224. *NCL Logistics Company v The United States*, No. 11-535C (US Ct. Fed Claims 2013)

Among other unacceptable practices that NCL was accused of and consequently was barred from further contracts for transporting services in Afghanistan, was forgery of signatures on records of deliveries. "Although Plaintiff claims that Mr. Epstein's report confirms that NCL never forged mission sheets, Plaintiff has not suggested that the ASBCA made such a finding. Nor does the record reflect that the ASBCA determined Mr. Epstein to be an expert based upon his knowledge, skill, experience, training, or education. Moreover, the record does not indicate whether Mr. Epstein was subject to cross examination or whether the government proffered a rebuttal expert." ASBCA stands for "Armed Services Board of Contract Appeals."

COMMENTARY: This is included as an example of a number of cases where one cannot ascertain whether or not there was live testimony or a formal finding of admissibility or inadmissibility. My general practice is to omit a case if there is not at least reasonable indication that there was either expert testimony or a finding regarding admissibility based on a challenge to the expert's qualifications or reliability. One cannot honestly say that this case should be added to *Wolf v Ramsey*, *Pasha v Gonzales* and *Hanaj v Gonzales* where the court evaluated the man's expertise in less than unqualifiedly glowing terms. All three of these cases are discussed in this text.

2015

225. *In re Brooks*, Case Number 13-10860 (U.S. Bankruptcy S.D. GA 2015)

In a dispute as to whether Brook's signature on a guaranty to a debt was genuine.

Brooks presented handwriting expert Arthur T. Anthony, while Gwinnett Community Bank presented handwriting expert Brian Carney. The court went with Carney's opinion.

COMMENTARY: The case report has many quizzical features, though I would not express an evaluation of the two examiners' work product without seeing the materials they examined. I believe each was vulnerable to attack given the statements credited to them.

226. *In re MBM Entertainment, LLC, et al., Debtors; Davis v M&M Developer, LLC, et al.; and related adversary cases*. Case Nos. 14-10991 through 14-10993 (MEW), (Jointly Administered), Adv. Pro. Nos. 14-02231 (MEW), 14-02386 (MEW), 15-01086 (MEW) (U.S. Bank. Ct. S. D. NY 2015)

Peter V. Tytell testified credibly that he was "virtually certain" that Plaintiff Davis had signed certain documents. Her attorney agreed. And here is the *however*: "The Court finds the expert's testimony to be credible, although since no party seeks to enforce the May 6 sale agreement (and all parties concede it was a sham) it makes little difference whether Davis signed it or not."

COMMENTARY: My subjective impressions are as follows. Once more one of ours makes a good living because the client thinks the expert is worth much more than the fact finder thinks. We often give only a kind of peace of mind which can be a more valuable service than economic advancement. Davis won, not by winning, but by not losing as much as she could have, thanks to the Defendants' failure to prove their best and fullest claims.

227. *In re Eric Carl Zierke, Chapter 13, Debtor*. Bankruptcy No. 14-00586 (U.S. Bankruptcy Ct. N.D. IA 2015)

Footnote 3 reads: "Both the Bank and Debtor presented handwriting experts that examined Debtor's signatures on each Note. However, because the Court determined that the Bank's witnesses were credible, there is no need to address the experts' findings."

COMMENTARY: There are a number of cases cited herein that are best as causes for humility in handwriting experts. This one might take first prize, since the opinions are not only not worth the bother considering but merely redundant as useful evidence.

2016

228. *In Re: Larry Gaines, Chapter 7, Debtor. Navy Federal Credit Union v Gaines*, Case No. 14-11269 (U.S. Bankruptcy Court E.D. LA 2016)

The case concludes with: "For the reasons set forth above, primarily because the court is not convinced there is a debt, but that even if there is a debt, NFCU did not prove its case beyond a preponderance of the evidence, the court dismisses NFCU's complaint seeking to have the debt declared nondischargeable."

COMMENTARY: This case is hardly a landmark case legally or a display of

major mastery in forensics that will become a bedside bible for scientists and attorneys. It is far more important for those who seek excellence in doing ordinary tasks. Read the story told in the commentary on *Leroy v Seattle Funding Group of Arizona, LLC*, 1 CA-CV 10-0714. (AZ Ct. App. 1st Div. 2012) given later. In this case it seems more than one horseshoe nail was missing, but let us look at just the one “handwriting expertise” nail that went missing, one almost routinely unnoticed regarding handwriting exemplars.

As creditor, NFCU had to prove five factual elements by a preponderance of the evidence: “(1) the existence of a statement in writing; (2) the writing was materially false; (3) the writing concerned the debtor's financial condition; (4) the creditor reasonably relied on the statement; and (5) the statement was made or published with the intent to deceive. Here, the application for the car loan was taken over the phone, and the money was disbursed before there was any document signed.” Thus no writing was relied on in issuing the loan.

Robert G. Foley, an expert witness, was persuasive that the promissory notes were signed by the writer of the exemplars. “The problem with his testimony is that he had no contact with Gaines, never had Gaines give his signature in his presence, and relied on NFCU's representation that the documents he used as comparative signatures were the ‘known’ signature [sic] of Gaines. There was no application signed by Gaines for the car loan, so this expert witness's identification of the signature on the two notes is of little assistance to the court in determining whether Gaines knowingly misrepresented his income to NFCU in acquiring the car loan.”

There was a further problem. Footnote 7 says: “One problem with his identification is that he listed as the questioned documents the two December 16, 2013 notes but did not list as a questioned document the draft dated December 6, 2013. Instead, in his report he referred to the draft as a comparative document containing a signature submitted as the known signature of Gaines, when it is clear that the signature on the draft is also in question.”

In reading my next remark do bear in mind I recognize and represent him in this text as one of the more well experienced and respected handwriting experts, a.k.a. document examiners, being so often mentioned positively in case reports discussed herein. I submit that the essential problem for handwriting expertise is threefold. First, although the only two publications giving relative dominance of tasks in document examination assert the great preponderance of handwriting tasks compared to all others combined, most document examiners make it seem like handwriting issues are becoming at best a side show soon to be nearly extinct. Second, there is the myth that self-study, however assiduously, comprehensively and intelligently pursued, is of no help for learning much of anything in document examination. Thirdly, the myth has been created and fostered that trade school type courses in colleges and universities will alone make handwriting expertise in any way expert much less scientific. Thus document examiners are almost commended for cultivating ignorance of the teachings of the classic practitioners of the two previous centuries and even beyond.

As an object lesson, please see my 1990 survey and compilation of traditional teachings on handwriting exemplars:
<https://archive.org/details/ExemplarsGenuineSamplesForComparisonWithQuestionedWritingsAnd>.

All the flaws in Foley's performance would have been forestalled by reference to the traditional teachings by the giants of document examination whose generation seemed to have completely died off before the entry of the 21st Century on January 01, 2001. Well, yes, the 20th Century ended with December 31, 2000, which completed the second millennium of AD or CE, whichever set of letters you prefer.

229. *In re BIC PHO, Chapter 7 Debtor. Nara Bank v Bic Pho*, Case No. 07-52664-ASW, Adv. Proc. No. 07-5199 (U.S. Bankr. Ct. N.D. CA 2015); Adversary No. 07-5199 RLE. Debtor's Motion to Recover Attorney's Fees Denied (U.S. Bankr. Ct. N.D. CA 2016)

Plaintiff called Frank Hicks as a handwriting expert. His report was stipulated to and entered into evidence.

"Mr. Hicks evaluated the signature on the November 7, 2006 Application. In doing so, Mr. Hicks used a sampling of signatures, including signatures on 15 original documents. In Mr. Hicks' opinion, the signatures were written rapidly, without hesitation, which resulted in variations between the signatures. For this reason, Mr. Hicks did not suspect that the signatures were forged; however, Mr. Hicks acknowledged that if there was someone skilled at forging Defendant's signature, then Mr. Hicks would not have been able to detect it. Mr. Hicks also observed that the application was filled out with printed text in a different color ink than the signature. However, Mr. Hicks stated that printed text and cursive cannot be compared. According to Mr. Hicks, he was not asked to compare the printed text in the documents with exemplars of the Defendant's printed handwriting.

"According to Mr. Hicks' report, there was a strong probability that Defendant signed the November 7, 2006 Application. The report explains that there are several degrees of certainty which document examiners use when comparing a signature to exemplars of an individual's signature. Mr. Hicks used the second highest degree of certainty when comparing the November 7, 2006, Application with exemplars of Defendant's signature. The only limitation preventing Mr. Hicks from expressing the highest degree of certainty was that Mr. Hicks examined a photocopy of the November 7, 2006 Application rather than the original document. Mr. Hicks testified on cross-examination that it was possible that Defendant's signature from another document was superimposed onto the November 7, 2006 Application."

Hicks examined another application in the original and had the highest assurance Defendant had signed it.

COMMENTARY: Please be aware no criticism is offered regarding Hicks, but common logical failings are addressed. Fortunately most cross-examiners seem no better at logic than most forensic experts. Maybe the following observations will be of good use

to you someday.

Rapid writing gives no suspicion of forgery. Thus, if you forge something, write rapidly. If you slow up your own writing, an expert will suspect you of forging yourself.

Who fills out an application in one pen then switches to another of a different color to sign it? My guess is that Hicks had more to say than the bare fact that is so suggestive of various scenarios.

Instead of, “Mr. Hicks would not have been able to detect” a skilled forger, I am sure he would prefer the report to say “might not.” There are different types and degrees of skill.

Application was filled out in printed text, while the unstated implication was that the signature or some exemplars were in cursive. Printed handwriting and cursive handwriting are said not to be able to be compared. In which case how does one determine cursive is not printed like printed is and vice versa? We have come upon this particular irrationality more than once in this compilation. Minus massive brain surgery, I despair of it ever being extirpated among such self-confessed inexperienced handwriting experts, who seem to be the majority.

He could not say Defendant signed the application for sure because he had only seen a copy. Could the original have possibly let him say Defendant had not signed if he had seen it? If not, then the opinion was not based on handwriting evidence but on some bias. If so, then it is equally likely Defendant either did or did not sign. Granted this is a problematic argument, it seems as good, or as poor, as the one reported.

230. *In re O'Brien, First National Bank of Omaha v O'Brien*, Case No. 15-21184, Adversary No. 15-6089 (U.S. Bankr. Ct. S. KS 2016)

“According to the testimony of a highly credible handwriting expert, it is clear that Debtor signed both his name and his wife's name on the First Pledge Agreement for the CD. Mrs. O'Brien testified she did not give Debtor permission to sign her name. Mr. O'Brien testified he had never seen the First Pledge Agreement nor several of the other loan documents admitted at trial, though he admitted the documents contained his signature. Because his memory seemed faulty about his execution of the loan documents—and about the content of those documents and many other details surrounding the 2011 loans, Debtor's testimony was not particularly credible about how and whether loan documents were executed. For that reason, the Court adopts the conclusions of the handwriting expert regarding the signatures on the loan documents. Debtor signed his own name and his wife's name (without her authorization) on the First Pledge Agreement and on two other pledge agreements detailed below.”

COMMENTARY: Such underhanded activities are a highly effective way to undermine whatever affectionate regard remains in a marriage.

C. FEDERAL COURTS OF APPEAL.

1. First Circuit.

1993

231. *U.S. v Parkinson*, 991 F.2d 786 (1 Cir. 1993)

“At trial, Sara Plourd was asked if she recognized the note and responded: ‘Yes, that’s the note that the man gave me.’ And following the note’s admission into evidence, the FBI document examiner identified it (by means of his initials which he had written on the back) as the one that had been sent to him for examination; as mentioned, he also identified the writing as that of defendant. As he did below, defendant now argues that the court erred in admitting the note because the government failed to prove an uninterrupted chain of custody.”

The argument failed because, at least at that time, the rule was only when “the offered evidence is of the type that is not readily identifiable or is susceptible of alteration, a testimonial tracing of the chain of custody is necessary.” The note was readily identified by Plourd and the document examiner.

COMMENTARY: As a safer course of action, a document examiner does the best one can in the circumstances to establish an unbroken chain of custody and also make sure one can positively identify the evidential document when presented with it much later in court.

1994

232. *U.S. v Alosa*, 14 F.3d 693 (1 Cir. 1994)

COMMENTARY: At page 696, concerning ledgers of drug transactions found in a search of defendant’s house: “The government not only introduced the ledgers but, over objection, offered expert handwriting and print evidence that associated both ledgers in some degree with Lisa and one of them with Hamilton.”

1995

233. *U. S. v Wade*, 45 F.3d 424 (1 Cir. 1995)

An FBI handwriting expert identified Wade as writer of a hold-up note.

COMMENTARY: Several years ago a would-be bank robber entered Wells Fargo in San Francisco Financial District. The teller said she could not honor his hold-up note since it was written on a Bank of America form and directed him to the Bank of America across the street. He went there, and the teller told him she could not honor it since he had presented it originally to Wells Fargo. When he returned to Wells Fargo, the police were waiting for him.

1996

234. *U.S. v Phaneuf*, 91 F.3d 255, 1996 U.S. App. LEXIS 18999 (1 Cir 1996)

COMMENTARY: It seems that forensic handwriting evidence was used only during investigation and at the sentencing phase.

1997

235. *U.S. v Lherisson*, 1997 U.S. LEXIS 34110, (1 Cir 1997); *certiorari* denied, 1998 U.S. LEXIS 1256, 522 US 1136, 118 S.Ct. 1095, 140 L.Ed.2d 150 (1998)

COMMENTARY: The beginning of one sentence gives the entire statement about handwriting evidence: “A handwriting expert testified that the signature on the March 24, 1989 letter of credit was in fact Lherisson’s....”

236. *Soto v Flores, et al.*, 103 F.3d 1056, 1997 U.S. App. LEXIS 496 (1 Cir 1997); *certiorari* denied, 522 U.S. 819; 118 S. Ct. 71; 139 L. Ed. 2d 32; 1997 U.S. LEXIS 4739; 66 U.S.L.W. 3255 (US 1997)

COMMENTARY: Footnote 3 states that Soto claimed Flores’ signature on an “Other Services Report” was an after-the-fact forgery and that her claim was supported by a handwriting expert and by Flores’ testimony which suggested pressure was put on him.

1999

237. *U.S. v Gaines*, 70 Fed.3d 72, 1999 U.S. App. LEXIS 3813, 51 Fed R Evi Serv (Callaghan) 8000 (1 Cir 1999)

A defense witness testified Gaines was with him on certain dates, referring to his 1996 date book which had relevant notations in red ink. Secret Service Senior Document Examiner Larry Stewart testified that red ink appeared for no other entries in the date book, the inference being that the relevant entries were a late addition to support the testimony.

COMMENTARY: Mr. Stewart was the object of criticism with another Secret Service ink expert in *Thereza Imanishi-Kari, Ph.D.*, DAB No. 1582 (1996), Department of Health and Human Services, Departmental Appeals Board, RESEARCH INTEGRITY ADJUDICATIONS PANEL, SUBJECT: Thereza Imanishi-Kari, Ph.D. DATE: June 21, 1996; Docket No. A-95-33; Decision No. 1582. The complete decision is available on the Internet: <http://www.hhs.gov/dab/decisions/dab1582.html>.

The decision exonerating Dr. Imanishi-Kari provides a scathing, but very courteous, assessment of ink testing and analysis practices used by Mr. Stewart and his colleague, John W. Hargett. This academic case provides excellent guidance on assessing similar expert evidence in court cases from a scientific approach by very accomplished scientists in academia. They point the way to a far more perceptive and fruitful critique of forensics than the anti-expert experts ever provided cumulatively.

238. *U.S. v Salimonu*, 182 F.3d 63, 1999 U.S. App. LEXIS 15060, 52 Fed R Evid Serv (Callaghan) 711 (1 Cir 1999)

Two issues are pertinent in this case: exclusion of a linguist and testimony by a handwriting expert.

Regarding the linguist, the Court's summary in 182 F.3d 63 reads in part: "(4) district court's assessment that linguist's analysis of incriminating tape-recordings in comparison with exemplar of defendant's voice was not reliable, and thus was not admissible, was within the court's discretion; (5) such testimony also could be excluded on ground that linguist admitted that a layperson could distinguish the differences that he found...." Defendant had called the linguist to show it was not his voice on tapes.

A handwriting expert identified Salimonu as writer of a letter that corroborated other evidence of his acquaintance with an individual whose first name was mentioned in the letter.

COMMENTARY: Often the handwriting expert plays, as here, a very minor role in the case.

Regarding exclusion of the linguist, this case lets the narrow reading of *Daubert* by the anti-expert experts in challenging various forensic disciplines come back to haunt a defendant. Because of this exclusion, this case is at times cited in discussions of the admissibility of handwriting expertise.

239. *U.S. v Vigneau*, 187 F.3d 82, 1999 U.S. App. LEXIS 16907 (1 Cir.)

At page [*4]: "Nor did the government offer other direct or circumstantial evidence, such as a handwriting expert, to show that it was in fact Mark [Vigneau] who had completed the forms."

COMMENTARY: I include this case because there was no expert handwriting testimony, but there should have been. We have seen cases where it was offered yet considered of scant use. In other cases where it was an evidential necessity, it was not offered. This case may offer a selling point for you some day.

2001

240. *Interstate Litho Corp. v Brown, et al.*, 255 F.3d 19, 2001 U.S. App. LEXIS 15094 (1 Cir 2001); 534 U.S. 1066, 122 S. Ct. 666, 151 L. Ed. 2d 580, 2001 U.S. LEXIS 10976, 70 U.S.L.W. 3383 (US 2001)

COMMENTARY: This is the entire discussion that the report gives to expert handwriting evidence: "At trial, Interstate's principal claim was that Becker had not signed the purported contract for the sale of the presses. There was a battle of handwriting experts, and the jury rejected Interstate's suggestion that Becker's signature had been forged."

241. *U.S. v Battinelli*, 2001 U.S. App. LEXIS 16760, 2 Fed. Appx. 14 (1 Cir 2001)

COMMENTARY: Secret Service document examiner testified that defendant wrote false information on a loan application.

242. *U.S. v Scott*, 83 F. Supp. 2d 187, 2000 U.S. Dist. LEXIS 561 (D. Mass. 2000); affirmed in part and reversed and remanded in part, 270 F.3d 30, 2001 U.S. App. LEXIS 23417 (1 Cir 2001); certiorari denied, 2002 U.S. LEXIS 2662 (US 2002)

Conviction for bank fraud and making and possessing forged checks was upheld. Three separate identity theft crimes were considered together in an omnibus decision.

Court summary: “(3) Opinion testimony of a non-expert witness authenticating or identifying defendant’s handwriting was admissible....”

At 270 F.3d 30, at page 51, discussing objection to using IRS agent, James Donahue, as a lay witness to authenticate handwriting and thus implying that they had been investigating Scott for a long time, another argument by appellant is considered: “Even if the government might have done better to use an expert witness for the handwriting identification, as Scott argues, and even if another district court might permissibly have excluded the evidence on this basis, the availability of a less prejudicial method of proof is only a factor to be weighed in the Rule 403 inquiry and does not control this case.”

COMMENTARY: Presumably this defense attorney thought handwriting experts reliable and admissible. Or maybe he hoped for an expert against whom he could bring a successful motion to exclude. In any case, the quoted passage from page 51 could be used as consistent with, if not explicitly affirming, reliability. There is an extensive discussion of the two rules, 701 and 901(b)(2), that lay handwriting opinion must satisfy.

2002

243. *Afrasiabi v Harvard University, et al.*, 39 Fed. Appx. 620, 2002 U.S. App. LEXIS 13136 (1 Cir 2002); certiorari denied, 538 U.S. 920, 123 S. Ct. 1615, 155 L. Ed. 2d 309, 2003 U.S. LEXIS 2176 (2003)

After criminal charges were dropped against plaintiff as author of an anonymous letter, he brought civil action for having been excluded from Harvard’s campus.

“Afrasiabi contends that he is entitled to a new trial because the district court erroneously excluded the evidence of his handwriting expert offered on the eighth day of trial to support his contention that he was not the author of the hate letter.” However, for his “flouting” the discovery rules and because his expert’s report “failed woefully to meet the rule’s formal requirements for disclosure,” exclusion of the expert was within the District Court’s discretion.

COMMENTARY: The attorney is responsible to see that experts fulfill all requirements of the rule, but the fully competent expert is self-supervised in that regard and will specifically ask instructions from the attorney when needed.

244. *Tiller v Baghdady*, 244 F.3d 9, 2001 U.S. App. LEXIS 4254 (1 Cir 2001); 294 F.3d 277, 2002 U.S. App. LEXIS 13039, 53 Fed R Serv 3d (Callaghan) 670 (1 Cir 2002)

The discussion has to do with 2002 U.S. App. LEXIS 13039.

Having lost at trial, in a motion for reconsideration based on fraud by means of a forged signature, Tiller's burden of proof of fraud was clear and convincing. Neither of her two post-trial handwriting experts, Pauline Patchis and Charles Shure, ever testified in the case, but the Court of Appeals bases its decision in part on their reports. The Court of Appeals assesses the experts' assurance in these words: "Both experts expressed only a preliminary opinion that it was 'probable' that the signatures on the Haddad Power of Attorney and the 1977 letter were forged. Both made clear that they could not render conclusive findings on the materials Tiller provided them." The client never provided what they further requested. The Court ruled that "probable" did not equate to "clear and convincing." Besides, Tiller's own witness at trial contradicted the post-trial experts' reports, stating that the writings were genuine.

COMMENTARY: One might consider the Court's reliance on the experts' reports in two ways. First, the reports were inherently reliable. Second, whether reliable or not they were Tiller's own offerings and so were weighed against her interests. Thus, while not a case of admissibility, it does support the validity of handwriting terminology for levels of certitude but not its parallel to levels of proof at trial. There is more detailed discussion of the handwriting issues which is worth the reading.

245. *U.S. v Mooney*, 315 F.3d 54, 2002 U.S. App. LEXIS 27130, 60 Fed R Evid Serv (Callaghan) 60 (1 Cir 2002)

At page 61, et seq., in section titled "III. EXPERT TESTIMONY," Court of Appeals upholds admissibility of expert handwriting testimony after *Daubert* hearing both as to observations and as to conclusion of authorship. At page 62: "Finding the *Daubert* factors relevant to his evaluation of the reliability of the expert's testimony, the judge noted that all the factors were met in this case." At page 63: "The defendant, however, misunderstands *Daubert* to demand unassailable expert testimony. As we previously explained, *Daubert* does not require that the party who proffers expert testimony carry the burden of proving to the judge that the expert's assessment of the situation is correct.... It demands only that the proponent of the evidence show that the expert's conclusion has been arrived at as a scientifically sound and methodologically reliable fashion.' *Ruiz-Troche v. Pepsi Cola of P.R. Bottling Co.*, 161 F.3d 77, 85 (1st Cir. 1998)."

And also at page 63: "The *Hines* opinion, of course, has no binding effect." This is in reference to *U.S. v Hines*, 55 F. Supp. 2d 62 (D. MA 1999), which was discussed previously.

COMMENTARY: Unfortunately, the handwriting expert who did so well is not named. The opinion provides a very sensible interpretation of *Daubert/Kumho*, one that I believe is the correct one, the one that makes most sense from a reading of those cases.

246. *Colon and R. K. Grace & Company of Puerto Rico, Inc., v R. K. Grace & Company and Kaweske*, 358 F.3d 1, 2003 U.S. App. LEXIS 25910 (1 Cir. 2003)

“As to the January 1997 agreement, Colon [*4] denied that he had signed it. When a version purportedly bearing his signature was produced by defendants, Colon said (backed by a document examiner) that the signature was not his and asked the district court to exclude it from consideration.”

COMMENTARY: This may be the most succinct report of testimony by a handwriting expert in all of case law. Still, as another case of routine admissibility, it supports general acceptance of the reliability of the expertise by the courts.

247. *Gaydar and Stepanov v Sociedad Instituto Gineco-Quirurgico y Planfacion Familiar, et al.*, 345 F.3d 15, 2003 U.S. App. LEXIS 19947, 62 Fed R Evid Serv (Callaghan) 722 (1 Cir 2003)

An abortion went wrong for the mother and suit was brought. Footnote 1 gives a sterilized description of the procedure employed by saying a tube attached to a suction machine is inserted into the uterus, “after which the contents of the uterus are emptied into the tube.” Plaintiffs prevailed, and the jury reward was affirmed. The fourth and last point of error was that a physician testified to alteration of medical records and he was not “a calligraphy expert.” However, such expertise is not needed to recognize handwriting by two different persons, and the witness was expert in the proper way to alter or modify medical records.

COMMENTARY: There is a lot else in questioned document examination for which no specialized training is needed, while nothing in the field is beyond the ability of most intelligent and industrious adults to learn by assiduous self-study and self-application. That highly touted training courses and apprenticeships are not productive of inerrant experts is shown by how regularly, and at times how readily, members of the profession testify to contrary opinions. Indeed, historically many of the greatest experts in American document examination were self-taught.

I offer the following as an editorial on other than legal or forensic issues. Every abortion goes wrong for the human fetus, legally classified as a non-human. Its little heart beating, brain functioning, little hands grasping and tiny toes twitching, but being far too young to vote, demonstrate, or donate to political causes, we grant the helpless being no constitutional protection.

248. *Valente v Wallace, et al.*, 332 F.3d 30, 2003 U.S. App. LEXIS 11803, 61 Fed R Evid Serv (Callaghan) 993 (1 Cir 2003)

Valente was terminated by Hewlett-Packard for writing anonymous bomb threats. She sued the police and others for a warrantless arrest that did not result in prosecution. Her case was dismissed mainly on the basis that expert handwriting reports by McCann

and Associates provided reasonable cause for the arrest.

COMMENTARY: Though no expert testimony was ever given, the expert report was of sufficient reliability to have the constitutionality of the arrest hold up in District Court and upon appeal. Further support for handwriting expertise is given at the end of the report: “Finally, Valente says that a psychological profile commissioned by HP allegedly suggested that the culprit had traits that differed from Valente’s. However, while handwriting is an inexact science, psychological profiling appears to be even more inexact; handwriting experts have been routinely used in courts for a century now, Mnookin, *supra*, at 1726, while psychological profiling remains primarily a law enforcement device for narrowing the field of suspects and is rarely admissible in court.” Mnookin’s article cited in favor of admissibility of handwriting expertise was written in support of its inadmissibility. See my critique of the article in *A Challenge to Handwriting Experts and an Answer to Their Critics; Revised*. 2006, A & M Matley, San Francisco, CA, May 2007. Pages 12-16.

2009

249. *U.S. v Silva*, 554 F.3d 13, 2009 U.S. App. LEXIS 1277 (1 Cir. 2009)

COMMENTARY: A handwriting expert testified for the defense for the limited purpose of impeaching the credibility of a prosecution witness.

2011

250. *Donald v Spencer*, 685 F. Supp. 2d 250 (Dist. Ct., D. MA 2010); affirmed, 656 F. 3d 14 (1 Cir. 2011)

COMMENTARY: At his original trial for rape, kidnaping and related crimes, Donald was convicted. Part of the evidence was that a document examiner identified him as the writer of certain documents. Various appeals in state court availed him nothing, and Federal District Court affirmed denial of post-conviction relief by the state courts, and it in turn was affirmed by the federal court of appeals.

2016

251. *U.S. v Ford*, No. 14-2245 (1 Cir. 2016)

James Weaver, a retired special agent with the Maine Drug Enforcement Agency, “testified the handwriting from the calendars, notebooks, and checkbooks all appeared to be the same as the handwriting from DMV records filled out by Darlene.” There was no indication in the case report that Weaver was a handwriting expert or qualified as a lay witness as to handwriting, nor was there any objection. Also without objection was the testimony related in footnote 3:

“Another government witness, Michael Ballback, an asset forfeiture investigator

for the Bureau of Alcohol, Tobacco, and Firearms, testified the handwriting from checks written by Darlene appeared to be the same as that in the notebooks and bank deposit slips. James neither objected to this handwriting testimony at trial, nor has he challenged it on appeal.”

COMMENTARY: What I consider negligent performance by both trial and appeal counsel for Defendant becomes acceptable and credited to Defendant personally. Thus, the professionally inexcusable is legally excusable.

2. Second Circuit.

1993

252. U.S. v Tarricone, et al., 996 F2 1414 (2 Cir 1993)

It was ineffective assistance of counsel for failure to consult a handwriting expert, who would not have to be disclosed unless used at trial. Though defendant told counsel the handwriting was not his, it was not obvious from just looking at it. It was block letters versus script. Lay handwriting evidence contradicted defense counsel’s opening statement that jury would not find defendant’s handwriting on the “throughput.” Jury asked for read-back on the testimony and on counsel’s statements about handwriting. So it loomed big, said Court of Appeals.

COMMENTARY: It is reasonable to infer that, if the Court of Appeals had not considered the expertise reliable and admissible, it could hardly have found that failure to consult an expert was ineffective assistance of counsel.

1994

253. U.S. v Rivera, et al., 22 F.3d 430 (2 Cir 1994)

At page 436: “And though Rivera maintains that Rodriguez had fabricated her testimony as to his involvement in the organization, her testimony was corroborated by expert testimony that a number of organization records were in Rivera’s handwriting.”

COMMENTARY: No indication is given that the expert testimony was challenged. However, it was admissible, and one can surely cite the case for that fact.

254. U.S. v Valdez, et al., 16 F.3d 1324 (2 Cir 1994)

It is obstruction of justice to disguise handwriting exemplars, thus making handwriting comparison more difficult. The writings in question were drug records. At page 1135: “In any event, there are few better examples of a classic obstruction of justice than a defendant who refuses to give handwriting samples when compelled by a subpoena. His disguise of his handwriting made difficult the comparison of his writing with that in the drug transactions notebook seized by the government, thus hindering the government in its investigation.”

COMMENTARY: It made the comparison difficult, not impossible. The expert may determine disguise in handwriting, a skill well supported by published research.

1996

255. *Rosenfeld v Basquiat*, 78 F.3d 84, U.S. App. LEXIS 4475, 43 Fed R Evi Serv (Callaghan) 983 (2 Cir 1996)

COMMENTARY: At page 87: “A forensic document examiner, Paul Osborn, opined that the handwritten ‘contract’ was in Basquiat's hand.”

256. *U.S. v Amiel, et al.*, 95 F.3d 135 (2 Cir. 1996)

Defendants were convicted of mail fraud for selling forged art prints allegedly signed by famous artists. Art experts at trial testified that most of the Defendants’ inventory of art prints were fake, as was what they sold to government investigators.

COMMENTARY: There is no explicit statement that the art experts testified specifically that the signatures on any art prints were fake. I assume that would have been a critical part of their opinion, but in any case I submit that forensic art expertise can be considered a specialized form of document examination that employs technology to a far greater extent and includes expertise in signature examination.

1997

257. *U.S. v Chohan*, 95 CR 876 (ED N.Y. 1996); 1997 U.S. App. LEXIS 17487 (2nd Cir); certiorari denied, in *Chohan v U.S.*, 522 U.S. 974, 118 S.Ct. 428, 139 L.Ed.2d 329, 1997 U.S. LEXIS 6830, 66 U.S.L.W. 3337 (US 1997)

1997 U.S. App. LEXIS 17487 (2nd Cir)

Defendant argued at appeal that admission of expert handwriting testimony was error. Court of Appeals said that, assuming it was error, it was harmless due to the overwhelming evidence of guilt.

COMMENTARY: The decision of the trial court regarding defense *in limine* motion to exclude expert handwriting testimony was: “The Court in *Daubert* dealt with scientific knowledge. I find that Ms. Kathleen Maguire is qualified as an expert on disputed documents. I find that she may testify on the specialized knowledge and I find that her testimony will assist the jury.” This seems to me to be an escape trick for the expert, specially so since the profession overall touts its scientific standing. How many texts in the field use the word “scientific” in their titles? Enough for a small sized professional library I hazard. Defendant might have had a better chance by pointing out to the judge that Maguire belonged to AAFS, where the “S” stands for “Sciences,” not “Skills” or “Specialties.”

258. *U.S. v Miller, et al.*, 116 F.3d 641, U.S. App. LEXIS 14974, 46 Fed R Evid Serv (Callaghan) 1174 (2 Cir 1997); certiorari denied, 1998 U.S. LEXIS 3606 (US 1998)

A handwriting expert testified for the Government, identifying one writer of addresses of murder victims on a document found in defendant's apartment. Later in the case the Government realized it did not have a key document, so it subpoenaed it and disclosed it to Defense, who objected to its admission on basis of prejudice due to late disclosure. At page [*110]: "When [Defense Counsel] was asked what prejudice Robinson claimed from the late disclosure, he stated that he was deprived of the opportunity to consult handwriting and fingerprint experts with respect to the document. The court indicated that this was not an adequate demonstration of prejudice since Robinson could present such expert testimony during defense case, that the court would entertain a request for a continuance if needed, and that in the absence of prejudice the court would admit the document. We see no abuse of discretion in this ruling."

COMMENTARY: It is a case of routine admissibility, with the added indication that Defense Counsel recognized the value of the expertise in his own case.

259. *U.S. v Shodeinde and Fasheun-Tokunbo*, 1997 U.S. App. LEXIS 5435 (2 Cir 1997)

COMMENTARY: Shodeinde pled to, and Fasheun-Tokunbo was tried and convicted of, submitting false claims for tax refunds. Proof at trial included "expert testimony that the defendants had authored much of the writing on sixteen returns."

1999

260. *U.S. v Chacko*, 169 F.3d 140, 1999 U.S. App. LEXIS 3156 (2 Cir 1999); certiorari denied, in *Chacko v U.S.*, 534 U.S. 930, 122 S. Ct. 293, 151 L. Ed. 2d 216, 2001 U.S. LEXIS 7152, 70 U.S.L.W. 3243 (US 2001)

COMMENTARY: Gus Lesnevich, the handwriting expert, testified..

261. *U.S. v Austin*, 101 F.3d 107; affirmed after remand in part, 1999 U.S. App. LEXIS 19254 (2 Cir 1999)

COMMENTARY: In 1996 U.S. App. LEXIS 4374, at page [*4], the Court states: "Although there is some dispute as to whether Austin actually knew the owner of the account, a handwriting expert testified at trial that both checks were endorsed by Austin."

2000

262. *Amiel v U.S.*, 209 F.3d 195, 2000 U.S. App. LEXIS 6879 (2 Cir. 2000)

COMMENTARY: A handwriting expert testified, but no details are given.

263. *U.S. v Cusack*, 66 F. Supp. 2d 493 (S.D. NY); affirmed, 229 F.3d 344, 2000 U.S. App. LEXIS 25627, 55 Fed R Evid Serv (Callaghan) 1071 (2 Cir 2000); *habeas corpus*

petition denied, 2001 WL 1568808, 2001 U.S. Dist LEXIS 20358 (S.D. NY 2001)

Conviction for making and uttering false JFK documents is affirmed. Defense asked for a continuance so that Robert J. Phillips, who had just suffered an eye injury, could be called as a handwriting expert. Denial was not error: "Because Cusack did not announce his intention to call Phillips until after the start of trial, and the content of Phillips' testimony was not known, the district court did not abuse its discretion by denying the continuance." At pages [*10] and [*11].

COMMENTARY: The appeal report does not mention that two witnesses were called by the Government as handwriting experts. One, Gus Lesnevich, had prior to hiring out to the prosecutor examined at least some of the documents for an investor, whose attorney wrote a letter denying permission for the Government to use Lesnevich in the case. He worked for the Government anyway. The rule is that it is unethical for an expert who has worked in the same case or on the same material for a first client to work for a second client without explicit permission from the first client. He also testified on redirect that he had not proved the documents in question to be forged, only that they could have been forged and that Cusack could have forged them. Defense was permitted to call Herry O. Telsher, now deceased, as a handwriting expert.

In the related New York civil case, attorney Carl Person filed approximately a two-foot stack of affidavits of percipient and expert witnesses, mostly setting forth evidence available during the criminal trial but never used by defense attorney. Although the civil defendants filed no controverting evidential affidavits to this massive and detailed evidence nor specifically denied it, the state court of appeal ignored it all and closed the door to having the issues of fact properly, fairly and fully litigated. See my: *Studies in questioned documents, Number Two: In the exercise of ignorance: Replies to the critics of handwriting expertise*. Second, enlarged edition, San Francisco, CA, Handwriting Experts of California, 2000. Appendix A has a critical analysis of the theoretical and methodological inadequacies of prosecution handwriting experts in the Federal criminal trial

The other trial expert for the government was Dr. Duane Dillon. He testified to spending six hours at the J. F. Kennedy Presidential Library where he claimed to have verified 35 forged documents. That allows about ten minutes to examine and photograph each of the 35 documents, if he had done nothing else. However, he said that he went through several boxes of documents and claimed to have found new JFK signatures by secretaries. Presumably he also did such things as deal with the staff, set up and later pack equipment, examine documents he concluded were not forged, take breaks and eat lunch. One becomes skeptical he even spent two or three minutes properly examining each of the alleged 35 forgeries.

The two experts were hired by a government which employs more document examiners than any other entity in the world. Were the government examiners so lacking in competence or were they more likely lacking in accommodation?

2001

264. *Lacey v Daly*, 26 Fed. Appx. 66, 2001 U.S. App. LEXIS 27405 (2 Cir 2001)

Defendant, a police officer, had probable cause to arrest Lacey based on handwriting analysis by Connecticut State Police Forensic Laboratory, and there was no evidence he had knowledge of anything casting doubt on the analysis. Summary judgment for Daly upheld.

COMMENTARY: There was no testimony, and so *Daubert* factors were not a consideration. However, I include this case as illustrative of many where an expert handwriting opinion can serve as one of the bases for a court's finding of fact or law.

265. *U.S. v Salameh, et al.*, 54 F. Supp. 2d 236 (S.D. NY 1999); affirmed, 261 F.3d 271, 2001 U.S. App. LEXIS 17431 (2 Cir 2001); affirming denial of post-trial motions, 16 Fed. Appx. 73, 2001 U.S. App. LEXIS 17685 (2 Cir 2001)

The discussion concerns 54 F. Supp. 2d 236. At pages 297-300 there is a discussion about not calling a handwriting expert, and three are mentioned, Richard Bernstein, Charles Hamilton and Abdel Fattah Riad. The latter two could not match up an unknown writer to an exhibit, and the Court uses a touch of sarcasm to say that that might impress defense people and the New York Times, but it "is entirely unimpressive in a court of law." Defendant never testified to not writing the manual in question, but the point is he possessed it with intent to use. Defense counsel had gotten court permission to hire a handwriting expert, but defendant said he had written the manual so no one was hired to prove otherwise. Defense counsel in argument "reminded the jury that the government had failed to obtain the testimony of a handwriting expert."

COMMENTARY: One can reasonably argue that, if the courts considered handwriting expertise unreliable and inadmissible, they would not waste tax payer money permitting indigent defendants to hire handwriting experts. That the experts in this case knew when they could not make an identification underlines their reliability. This case had a very complex history of appeals and hearings which are not at all completely related above.

2003

266. *Boule v Hutton et al.*, 70 Fed. Sup.2d 378, 1999 US Dist LEXIS 15731 (SD N.Y. 1999); 138 Fed. Sup.2d 491, 2001 US Dist LEXIS 3654 (SD N.Y. 2001); 170 Fed. Sup.2d 441, 2001 US Dist LEXIS 18162 (SD N.Y. 2001); affirmed in part, vacated and remanded in part, 2001 328 Fed.3d 84, 2003 U.S. App. LEXIS 7734, 66 USPQ2d (BNA) 1659, 2003-2 Trade Cas (CCH) P74,095, 31 Media L Rep 1793 (2 Cir 2003); as corrected, judgment entered, 2004 US Distw1 LEXIS 9836 (SD N.Y. 2004)

The argument was over the authenticity of works of art. At *21: "The competing technical expert agreed that there were no anachronistic elements in the paper used for the

Paintings, but disagreed regarding the inks. It was not clear error to find this and the other evidence presented at trial in equipoise.”

There is extensive discussion of New York’s *Lanham Act* regarding commercial defamation, since suit was brought under the *Lanham Act*.

COMMENTARY: I include this case as another example of how various kinds of expertise used in document examination are routinely used in other fields. Signature identification, paper and ink analysis, as well as many tools such as ultra violet light are commonly employed in the day-to-day duties of art experts. The critics of document examination are simply and inexcusably mistaken when asserting courts of law are “the only customers” for forensic document examination, specifically handwriting expertise. Andrew Sulner testified for plaintiff, but the substance of his testimony is not indicated. Mr. Sulner is a member of Jurisprudence Section of AAFS. His mother authored the excellent and still worthy text, *Disputed Documents; New Methods for Examining Questioned Documents*, 1966, Oceana Publications, Inc.

267. *Opals on Ice Lingerie v Body Lines Inc.*, 320 F.3d 362 (2 Cir. 2003)

There were two versions of an agreement, Bodylines [form of name used in the report] contending the addendum changing applicable jurisdiction for disputes from New York to California was agreed on. Opals attached a different agreement, called the Karnick Agreement, to its complaint. Bodylines said the signature of its representative was a cut and paste, a contention that forensic experts for both sides agreed with. There was a bit of a complexity in filings and hearings, but it ended up in federal district court for Eastern District of New York, where Bodyline’s motion for summary judgment was granted on basis there was no valid agreement to arbitrate.

Skipping the critical legal reasoning except as intertwined with the expert opinions, we can quote the court’s findings: “Because the Karnick Agreement is void and unenforceable, Opals is not entitled to the relief sought in its complaint: a declaration that the Karnick Agreement is valid, and an injunction forcing Bodylines to comply with its provisions. As the district court noted, Opals did not move to amend its complaint when it discovered that the Karnick Agreement was a forgery, and if Opals’ suggestion that the court consider the other purported agreements was intended to be construed as a motion to amend the complaint, such a motion would have been untimely. See Fed.R.Civ.P. 15(a). Accordingly, the district court was correct in granting summary judgment in favor of Bodylines and dismissing Opals’ case.”

Regarding the two versions of the other agreement, the court notes: “The forensic experts retained by the parties were unable to render a conclusive opinion as to whether either the Opals version or the Bodylines version of the 10/97 Agreement was legitimate. Neither side has produced an original of the document.” Because Opals had submitted a concededly forged document, it would be unfair to admit its copy of another disputed document. The district court’s granting of summary judgment was upheld.

COMMENTARY: Technically there was no handwriting expertise involved but

rather other forensic skills. However, the case, like Aesop's fables, is rich in morals for both document examiners and attorneys. Principal among these is never let your client's contentions influence your performance or opinions, keep in mind the old adage that a copied signature might be of a genuine original, but the question how it got on the document must be determined, and, though a cliché, one's chickens still have a tendency to come home to roost.

268. *U.S. v Badmus*, 325 F.3d 133, 2003 U.S. App. LEXIS 5919 (2 Cir 2003)

COMMENTARY: Defendant's conviction for attempted possession of false identification documents and related crimes was affirmed. At page [*8]: "The government's handwriting analyst testified that the documents all had Mr. Badmus's handwriting on them."

2004

269. *U.S. v Gaskin and Castle*, 364 F.3d 438, 2004 U.S. App. LEXIS 7440 (2 Cir 2004); certiorari denied in *Gaskin v U.S.*, 125 S. Ct. 1878, 161 L. Ed. 2d 751, 2005 U.S. LEXIS 3186, 73 U.S.L.W. 3621 (US 2005)

In an argument of ineffective assistance of counsel, Castle contended his trial counsel should not have stipulated to his signature on four government exhibits. This was on basis counsel had stated to the District Court that "if he had known that the government would not call an FBI handwriting expert as a witness" he would not have stipulated that Castle signed the four exemplars to be compared to a disputed car rental receipt. With the stipulation given, the prosecutor chose not to call the expert and let the jury make its own comparison. However, Castle did not assert that the government could not have proven the signatures genuine nor could he demonstrate that failure to call the expert prejudiced him.

COMMENTARY: There was no challenge to reliability, at least overtly, unless one might speculate that defense counsel had planned on impeaching the expert and thus "proving" the signatures false. This case would thus only be one to show the post-*Daubert* acceptability of the expertise in general.

2005

270. *U.S. v Birkett, et al.*, 138 Fed. Appx. 375, 2005 U.S. App. LEXIS 13918 (2 Cir. 2005)

COMMENTARY: Handwriting expert testified that a handwritten letter had a phrase added by a second person.

271. *U.S. v Brown*, 2005 U.S. App. LEXIS 22703 (2 Cir 2005)

Defendant submitted that handwriting analysis does not satisfy requirements for

admissibility so that the district court was obliged to restrict the expert witness from expressing an opinion of authorship. “Similar attacks on handwriting analysis have been rejected by our sister circuits. [Citations omitted.] While our own court has not addressed the issue, we have routinely alluded to expert handwriting analysis without expressing any reservation as to its admissibility under Rule 702.” The following cases are then cited, all of which are Second Circuit decisions and are discussed in this paper: *U.S. v Tin Yat Chin*, *U.S. v Badmus* and *U.S. v Tarricone*.

COMMENTARY: This paper discusses other Second Circuit cases where expert handwriting evidence was received apparently without challenge as to reliability of the field itself.

2006

272. *U.S. v Adeyi*, 165 Fed. Appx. 944, 2006 U.S. App. LEXIS 3300 (2 Cir. 2006)

“The government’s handwriting expert testified to his belief that, based on the handwriting in Adeyi’s address book, two of the handwritten slips of paper found in the heroin packages appeared to be authored by Adeyi. Our circuit has not authoritatively decided whether a handwriting expert may offer his opinion as to the authorship of a handwriting sample, based on a comparison with a known sample. We have held, however, that ‘for an error to be plain, it must, at a minimum, be clear under current law.... A reviewing court typically will not find such error where the operative legal question is unsettled.’ *United States v. Weintraub*, 273 F.3d 139, 152 (2d Cir. 2001) (internal quotation marks omitted). Because expert opinion as [*4] to handwriting authorship is not clearly inadmissible in this circuit, we cannot say the district court committed plain error. n1”

“Footnote 1: Although we do not now decide on the admissibility of such evidence, we note that those circuits that have considered the question are unanimous that a properly admitted handwriting expert may, if the factors enumerated in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), are satisfied, offer an opinion as to the authorship of a disputed document. See, e.g., *United States v. Prime*, 431 F.3d 1147, 1151-54 (9th Cir. 2005); *United States v. Crisp*, 324 F.3d 261, 271 (4th Cir. 2003); *United States v. Mooney*, 315 F.3d 54, 61-63 (1st Cir. 2002); *United States v. Jolivet*, 224 F.3d 902, 905-06 (8th Cir. 2000); *United States v. Paul*, 175 F.3d 906, 909-12 (11th Cir. 1999). But see *United States v. Oskowitz*, 294 F. Supp. 2d 379, 384 (E.D.N.Y. 2003) (citing to district court cases that have excluded handwriting expert testimony offering an opinion as to authorship).”

COMMENTARY: Take particular note of what they took note of: “We note that those circuits that have considered the question are unanimous that a properly admitted handwriting expert may, if the factors in *Daubert*..., are satisfied, offer an opinion as to the authorship of a disputed document.” Maybe the solution to the alleged problem with unreliability in the forensic disciplines is twofold: To oust those who are found not to

satisfy the *Daubert* criteria, if they fail to learn how, and to ignore critics who themselves are found inadmissible when properly and thoroughly examined. We can take note how the critics of handwriting expertise have been rejected by courts of law. If a handwriting expert had been so often rejected, these very critics would scream from the housetops how that proves all handwriting experts are charlatans, yet they do not even whisper that the same experience for them at least hints they may in a tiny, small way suffer some itty-bitty flaw.

Summaries and commentaries on all cases cited in Footnote 1 are included in this work.

273. *U.S. v Stewart and Bacanovic*, 317 F. Supp. 2d 426, 2004 U.S. Dist. LEXIS 7739 (S.D.N.Y. 2004); 317 F. Supp. 2d 432, 2004 U.S. Dist. LEXIS 7738 (S.D.N.Y. 2004); 323 F. Supp. 2d 606, 2004 U.S. Dist. LEXIS 12538 (S.D.N.Y. 2004); 433 F.3d 273, 2006 U.S. App. LEXIS 271, 69 Fed. R. Evid. Serv. (Callaghan) 185 (2 Cir. 2006)

COMMENTARY: False testimony by Secret Service ink expert, Larry Stewart, had no effect on Martha Stewart's conviction, at least enough to reverse. But why else do prosecutors and their experts violate the rules unless they anticipate by a firm belief that most likely it will contribute to defendants' being convicted? And the trial judge must be shown to have been clearly erroneous, while the distinction here might be that it was only shown the witness clearly told a fib to bolster his claim to expertise. So a violator need simply obfuscate in arguing the facts and cloud over judicial errors in arguing the law. Expert's knowledge and/or perjury cannot be credited to prosecution since expert witness is neither a member of the prosecutorial team nor representative of the government—allegedly.

2007

274. *U.S. v Chin*, 371 Fed.3d 31, 2004 U.S. App. LEXIS 10707, 93 AFTR2 (RIA) 2519, 64 Fed R Evid Serv (Callaghan) 517 (2 Cir 2004); affirming conviction after remand, 476 F.3d 144, 2007 U.S. App. LEXIS 1976 (2 Cir. 2007)

2004 U.S. App. LEXIS 10707:

Conviction for impersonation of a federal employee and tax evasion was vacated and case remanded for new trial. The District Court limited the testimony of Julie Tay, an expert for defendant, to the linguistic differences between Cantonese and Mandarin and the expert's opinion that Tin Yat Chin is a native Cantonese speaker, but the expert could not say the voice that witnesses testified to hearing over the phone was not Chin's because he could not have faked the Mandarin accent they heard. That restriction was proper. There is extensive discussion of the proper reasons for the limitation, which Chin could attempt to cure on retrial.

However, the ruling excluding certain receipts as not being authenticated and admissible as non-hearsay was not harmless error. Chin had proffered a handwriting

expert to testify that Chin had signed receipts which would put him in Queens when Government witnesses claimed he was in China. His wife and store personnel would also testify in support of his being in Queens. The District Court set too high a standard for authentication and wrongly rejected the proffer.

2007 U.S. App. LEXIS 1976:

“As part of the defense case, Chin introduced the New York credit card receipts that had been excluded from the first trial, as well as the testimony of a handwriting expert, Roger Rubin, who opined that the signatures on the credit card receipts were Chin’s. Over objection, the Government was then permitted to present on rebuttal the testimony of its own handwriting expert, John Sang, who opined that many of the receipts were probably not signed by Chin. The jury returned a verdict of guilty on all four counts.

“On this appeal from the second conviction, Chin’s most colorable claim concerns the Government’s failure to disclose its intent to call Sang, and anything about his expert testimony, until the day before the defense concluded its case. Well before the start of the second trial, the defense had indicated its intent to call Rubin as its handwriting expert and had made the disclosures regarding his testimony required by *Rule 16(b)(1)(C) of the Fed. R. Crim. P.* The Government, for its part, had already retained Sang as its expert and had obtained from him an opinion challenging the authenticity of Chin’s signatures [*4] on the credit card receipts. Yet, knowing full well that the authenticity of these signatures would be a hotly contested issue in the case, the Government chose to remain entirely silent, until one day before the end of the defense case, both as to the fact that it had retained a handwriting expert and as to the testimony he was expected to give.

“At a minimum, this was a sharp practice, unworthy of a representative of the United States.”

COMMENTARY: Regarding the first appeal, the expert handwriting evidence was rejected by the trial court on incorrect legal grounds, but one could maintain that the appeal ruling assumes it would be admissible. In any case, its proffer served as a factual basis for vacating the conviction. Regarding the second appeal, I submit that prosecutors engage in sharp practices because they know that playing the game above board would result in acquittal. Yet, after the verbal reproof, in effect the Court of Appeals said they may do this sort of thing with impunity.

Roger Rubin is a member of NADE.

2008

275. *U.S. v Elfgeeh and Elfgeeh*, 515 F.3d 100, 2008 U.S. App. LEXIS 3169 (2 Cir. 2008)

COMMENTARY: A handwriting expert testified to defendants’ handwriting being on checks and deposit slips.

2015

276. *Wang v Lynch*, No. 14-2751 (2 Cir. 2015)

In denying Petitioner Wang's petition for review of an adverse ruling by the Board of Immigration Appeals, the last consideration of his asserted errors by the trial court is this:

"The IJ also did not err in declining to credit a report prepared in China, in which two Judicial Authenticators conclude (based on handwriting analysis) that the letters submitted in Zong's proceedings were not written by Wang. See *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 341-42 (2d Cir. 2006) (holding that determination of the weight of evidence is largely a matter of IJ discretion). As the IJ found, there was no information regarding what training the Judicial Authenticators completed to qualify as experts in handwriting analysis or how they obtained their Judicial Authenticator's Licenses."

COMMENTARY: I would imagine that the requirements for written submissions to our courts of law by American experts would apply equally, but maybe with more caution, to the same from foreign experts. It would certainly behoove one to submit such documents with as much foundation as possible and after diligent searching of applicable written rules and pertinent court rulings.

3. Third Circuit.

1994

277. *U.S. v Porat*, 17 F.3d 660; Sur Petition For Rehearing denied (3 Cir. 1994)

Porat was convicted of making a false statement to a grand jury that he had never had a Swiss bank account. A handwriting expert testified that the signatures on the Swiss bank records were Porat's. There was also evidence he had falsified a copy of his passport and submitted it as evidence. The government submitted a copy of the unaltered passport.

COMMENTARY: Was the perjury a hard choice between lying, coming clean, or taking the Fifth? Taking the Fifth seems the safest way to go in such situations.

278. *U.S. v Turcks*, 41 F. 3d 893 (3 Cir. 1994)

"Defendant Arthur Turcks was convicted on each count of a nineteen-count indictment, charging conspiracy, credit card fraud and bank fraud." All was affirmed except the restitution order which was remanded for redetermination and, in light of any redetermination, reevaluation of the sentence.

COMMENTARY: A handwriting expert testified Turcks had probably signed four of the invalid credit card slips.

279. *U.S.; Government of the Virgin Islands, v Sanes*, 57 F2 338 (3 Cir 1995)

A *Daubert* hearing was held on proffered defense expert testimony from a “professor of linguistics.” At page 341: “We conclude that the district court appropriately limited Dr. Holien’s expert testimony to the pertinent issue of whether the distinguishing factors on Sample No. 4 unduly influenced Ms. Velez’s selection. We also conclude that the district court did not abuse its discretion in excluding from the jury’s consideration the testimony that would have compared eyewitness and voice identification.”

COMMENTARY: There simply was no showing of reliability for the excluded evidence. This case is cited at times when handwriting expertise is considered.

280. *U.S.; Government of the Virgin Islands v Velasquez*, 64 F3 844, 33 V. Is. 265 (3 Cir 1995)

Lynn Bonjour, government handwriting expert, made a very positive impression on the Court of Appeals, as evidenced by several places in the record. Defendant sought to introduce Mark P. Denbeaux at trial as an expert witness as to the limitations of handwriting identification, but he was ruled inadmissible. The Court of Appeals held both experts admissible under *Daubert*. Ms. Bonjour gave succinctly and very clearly an intelligent methodology which she followed. In a footnote at 279 the Court quotes Ms. Bonjour’s estimate of Professor Denbeaux’s *Exorcism* article: “Ms. Bonjour acknowledged that she had read Professor Denbeaux’s law review article, although her critique — ‘it’s a lot of gibberish’ — was less than glowing.”

At page 278 is stated why the Third Circuit reversed by ruling Denbeaux was admissible: “In particular, we point to the Professor’s eight years of self-directed research on handwriting analysis and his co-authorship of a law review article on the subject.” The research referred to was literature research, not laboratory or field research.

COMMENTARY: The Court of Appeals very explicitly asserts the scientific reliability of handwriting identification. The challenge was precisely that the expertise was not scientifically reliable, but the Court of Appeals states that the Trial Court rejected this challenge and the Court of Appeals did also. When one rejects one of two prongs of a complete disjunction (handwriting expertise is not scientifically reliable), one necessarily accepts the other (handwriting expertise is scientifically reliable). However, the critics, not liking what clearly contradicts their thesis, said that the ruling of the *Velasquez* Court was ambiguous. This is typical of their perception and reporting of reality. Ms. Bonjour, highly regarded by those who knew and worked with her, perished in an automobile accident.

1997

281. *U.S. v Rosario*, 118 F.3d 160, 1997 U.S. App. LEXIS 17330 (3 Cir 1997)

At page 163, the “probability” finding by Secret Service handwriting expert, Jeffrey Taylor, was given although he did not know why there were “irreconcilable” differences present. Then at page 165: “Finally, we acknowledge that this is a close case. Indeed, were we sitting as triers of fact, we very well may have come to a different conclusion than the jury did here. Nevertheless, we cannot say that there was insufficient evidence to support the jury’s verdict.”

COMMENTARY: First, the expert ought to have given an opinion of either “indications are” or some degree of non-authorship until he had determined a reasonable explanation for the presence of each and every “irreconcilable” difference. The Court of Appeals’ upholding of the verdict seems to amount to affirming a finding of fact at trial that was much less than beyond a reasonable doubt. The well reasoned dissent explains lucidly why the conviction should have been overturned and how this handwriting expert’s opinion was remarkably inexpert. Nevertheless, nothing indicates that the expertise itself was other than reliable and admissible.

1999

282. *U.S. v Mastrangelo*, 941 FS 1428 (E.D. PA 1996); reversed and remanded for new trial, 172 F.3d 288, 1999 U.S. App. LEXIS 6373 (3 Cir 1999)

“A handwriting expert testified that the lease for the locker was probably signed by Mastrangelo and the locker rental agent testified that the renter was approximately the same height, age, and hair color as Mastrangelo, but neither witness’s testimony was unequivocal.”

COMMENTARY: I wonder whether the judicial prizing of unequivocal opinions unduly rewards those experts who are unequivocally definite about everything.

2000

283. *U.S. v Wert-Ruiz*, 228 F.3d 250, 2000 U.S. App. LEXIS 23394 (3 Cir 2000)

Conviction for laundering illegal drug money.

At [*7-8]: “The government presented evidence that Wert-Ruiz and her employees handwrote thousands of fictitious receipts for cash delivered to LAS that was supposedly going to individuals in the Dominican Republic. The government presented expert testimony that Wert-Ruiz attempted to disguise her handwriting in preparing these receipts. Investigators testified that out of a sample of well over one hundred receipts seized from Wert-Ruiz, they had been unable to find a single person identified on any of the receipts, indicating [*8] that the receipts were false. At trial, Wert-Ruiz testified that she had prepared the forged receipts from actual receipts provided by International

Services that purportedly reflected real transactions. These latter receipts were not produced at trial, and the government presented evidence that Wert-Ruiz had never admitted to writing the forged LAS receipts during interviews with law enforcement officials conducted after her arrest but before trial.”

COMMENTARY: The expert testified as to disguise of handwriting. Rebuttal is permitted to an explanation of innocence because of failure to produce the best evidence of business records to support it and because the explanation was late in the process.

2001

284. *U.S. v Van Wyk*, 83 FS2 515 (D. NJ 2000); 2001 U.S. App. LEXIS 6290 (3 Cir 2001); certiorari denied, 534 U.S. 826, 122 S. Ct. 66, 151 L. Ed. 2d 33, 2001 U.S. LEXIS 5666, 70 U.S.L.W. 3234 (US 2001)

Although FBI agent James R. Fitzgerald qualified as forensic stylistics expert by attending seminars, teaching, researching, and doing the work, he could not testify as to identify the author of unknown writings since forensic stylistics lacks reliability and has no known rate of error, no recognized standard, no meaningful peer review, and no accreditation in field. He could, however, testify to similarities between defendant’s writings and the threatening communications as an aid to the jury. At page 518 there is an interesting ruling: “The expert need not have complete knowledge about the field in question, need not be certain, and need not be unbiased.” The first two items are standard, but the third gives one pause. Nevertheless, an expert may not base opinions on speculation.

At page 521 it is described how Gerald McMenemy’s first book was cited by the Government to support reliability, but the Court gives this assessment: “Due, however, to the dearth of published cases or journals addressing forensic stylistics, the novelty of this field, and the fact that it has only been approved by law enforcement, the Court has no way of determining whether the McMenemy article is merely self-legitimized.”

COMMENTARY: In his second book, McMenemy dismisses this case as going against his expertise, since the witness supposedly followed Don Foster’s methods, which McMenemy said are quite faulted. In a 2003 case in San Diego County, *People v Flinner*, the trial judge ruled McMenemy’s expertise inadmissible under California *Kelly/Frye/Leahy* rule because it had no general acceptance, the *Van Wyk* case providing strong argument for that finding. Although nothing in handwriting examination parallels the difficulty that the *Van Wyk* and *Flinner* courts properly recognized in McMenemy’s brand of forensic linguistics, *Van Wyk* is often quoted to support inadmissibility of the former, just as *Van Wyk* cites several handwriting cases.

The citation and specific quote from *Flinner*, is: *People v Flinner*, California Superior Court, San Diego County, Case No. SCE 211301 (Motions), Reporter’s Transcript of Proceedings, June 30th, 2003, El Cajon, California, before The Honorable Allan J. Preckel. At page 21, lines 17-24, The Court rules: “The motion for

reconsideration is granted. The Court has been made aware of no criminal case in California that has allowed the introduction of evidence of forensic linguistics or stylistics. Such evidence, including the testimony of Dr. McMenamin, will not be admitted at this trial without first passing muster consistent with the requirements of the *Kelly* and *Leahy* cases. To date, the requisite showing of reliability has not been made.”

2003

285. *Dia v Ashcroft*, 2003 U.S. App. LEXIS 25901, 353 F.3d 228 (3 Cir 2003)

At [*38]: “Because Dia’s credibility was the basis on which the IJ [Immigration Judge] rested her decision to deny relief, the sole issue before us is that credibility determination.” The decision was vacated and the case remanded to Board of Immigration Appeals. Dia’s handwriting expert was McNally.

At [*78] et seq.: “The IJ explained her rejection of McNally’s testimony that the signatures on the passport and visa were not Dia’s, by opining that handwriting analysis is too uncertain to accord it much weight. This outright rejection of McNally’s testimony was unfounded. McNally’s expertise was unchallenged. McNally was trained by and worked for the U.S. government, has testified as an expert in various courts more than one hundred times, and belongs to two relevant professional societies, one of which has officially certified him an examiner of questioned documents. In his testimony, he clearly concluded that the signatures on the passport and visa were not Dia’s, thus lending support to Dia’s story. McNally only qualified this conclusion by noting that he preferred to use original documents (some of the documents he had examined were not originals), and by conceding that “anything is possible” with regard to signatures.

“The IJ supported her conclusion that handwriting analysis is not probative evidence by referring to *United States v. Van Wyk*. 83 F. Supp. 2d 515 (D. N.J. 1997). [*79] However, *Van Wyck* (sic) does not stand for this proposition, but, instead, deals with the admissibility of a forensic stylistics expert’s testimony under the Federal Rules of Evidence. Evidence presented in an immigration hearing needs to be ‘fair,’ ‘reliable,’ and ‘trustworthy,’ not necessarily admissible in federal court. *Ezeagwuna*, 325 F.3d at 405. More importantly, we have found that ‘expert testimony as to the similarities in handwriting is generally admissible’ in federal court, *United States v. McGlory*. 968 F.2d 309. 346 (3d Cir. 1992), and McNally’s curriculum vitae lists dozens of courts in which he has testified as an expert. Therefore, for this reason as well, the chief reason articulated by the IJ for her rejection of Dia’s testimony on this count—her conclusion that these were Dia’s authentic documents—is not supported by coherent reasoning or by record evidence.”

COMMENTARY: Without ruling on the correctness of the handwriting expert’s opinion, the Court of Appeals rules that it was reliable and ought not have been dismissed out of hand as inherently unreliable. Though immigration courts have more relaxed rules of admissibility than Federal District Courts, one ought still meet the highest standards in

order to be on the safe side and provide the client with the most cogent testimony possible. The *Van Wyk* case once more is interpreted as being a rejection of handwriting expertise. That the Court of Appeals notes this is an incorrect interpretation can be referred to when we are faced with the same fallacious argument.

2004

286. *Commonwealth v Lambert*, 1996 Pa. Super. LEXIS 40; 545 Pa. 650; 680 A.2d 1160; 1996 Pa. LEXIS 1363 (PA 1996); *Lambert v Blackwell*, 962 F. Supp. 1521 (U.S. Dist. E.D. Penn. 1997); reversed and remanded, 134 F. 3d 506 (3rd Cir. 1997); denial of post conviction relief affirmed, 2000 Pa. Super. 396, 765 A.2d 306, 2000 Pa. Super. LEXIS 4138 (PA 2000); 175 F. Supp. 2d 776 (U.S. Dist. E.D. Penn. 2001); *Lambert v Blackwell*, 205 F.R.D. 180 (E.D. Penn. 2002); 2003 U.S. Dist. LEXIS 5125 (E.D. Pa., Apr. 1, 2003); affirmed, 387 F. 3d 210, 2004 U.S. App. LEXIS 21176 (3 Cir 2004); certiorari denied, 2005 U.S. LEXIS 4404 (U.S. 2005)

962 F.Supp. 1521:

At page 1542 is given a portion of the evidence of malfeasance by the prosecutorial team: “We heard the expert testimony of William J. Ries, a ‘forensic document examiner’ who has participated in examining documents in over 5,000 cases for the Philadelphia and surrounding counties District Attorney’s Offices, including the Lancaster County District Attorney’s Office. His testimony on April 2, 1997 confirmed that the ‘statement’ was ‘unique’ in the peculiarities already noted. The testimony confirmed our conclusion that the ‘statement’ was a fabrication, and that Chief Detective Solt knew it when he testified both in the *Lambert* case and before us.[32]” Footnote 32 refers to submitting Solt’s testimony to the Federal Attorney’s office for appropriate action. See comments on 2000 Pa. Super. LEXIS 4138 for the state court’s quite different view of Ries’ testimony.

The district court catalogs a number of violations of Lambert’s constitutional rights, evidence of her innocence, and prosecutorial protection for the real murderer and accomplices. The decision ends with:

“Almost immediately after the snap judgment was made, law enforcement officials uncovered inconvenient facts such as the absence of cuts and bruises on Ms. Lambert — answer, no photographs of her — and many on Tabitha Buck and some on Yunkin — answer, conceal or destroy the mug shots. And as these untidy facts accumulated, Kenneff and Savage discovered a balm for these evidentiary bruises, Lawrence Yunkin. Yunkin would say and do anything to obtain what his lawyer rightly described as ‘the deal of the century’ in the February 7, 1992 plea agreement for ‘hindering apprehension’, which would carry a state sentencing guidelines range of 0-12 months. Thus Lancaster’s best made a pact with Lancaster’s worst to convict the ‘trailer trash’ of first degree murder.

“In making a pact with this devil, Lancaster County made a Faustian Bargain. It lost its soul and it almost executed an innocent, abused woman. Its legal edifice now in

ashes, we can only hope for a Witness-like barn-raising of the temple of justice.”
134 F. 3d 506:

The court of appeal threw Lambert back into the snake pit of the state courts: “We do not, however, diminish the obvious sense of outrage expressed by the prosecution nor that of the able district judge who heard and evaluated the evidence Lambert proffered. Resolution of these difficult questions 525*525 must nonetheless await the appropriate forum for the constitutional balance our forefathers created to remain in equipoise. Accordingly, we will vacate the order of the district court granting the petition for writ of habeas corpus and remand to the district court with the direction to dismiss the petition without prejudice.”

2000 Pa. Super. LEXIS 4138:

William J. Ries, Appellant Lambert’s forensic document examiner before the Post Conviction Review court, had several opinions about the validity of the statement that Detective Solt took from Appellant during the investigation. The court summarized them all at page *36: “Mr. Ries’s tone of disapproval and his inconsequential criticism of [Detective] Solt’s methods were of no help to this court and appeared to be little more than advocacy dressed in expert’s clothing.” Lt. Joseph Bonenberger, document examiner with the Pennsylvania State Police, came to other conclusions, such as Appellant’s signature in red ink was above, not below, other writing in black ink on the statement as revealed by microscopic examination. Further, Appellant’s own statements supported both Solt’s testimony that his writing in black ink recorded Lambert’s statements to him and Bonenberger’s testimony as to the sequence of the writing.

Additionally, defense handwriting expert testified that a document had no erasures and no traces of graphite; thus, no pencil writing had been made on the document. The prosecution stipulated to this opinion since its handwriting expert had also examined the document.

175 F. Supp. 2d 776:

Judge Dalzell reinstates his decision in 962 F. Supp. 1521.

2004 U.S. App. LEXIS 21176:

Denial of *habeas corpus* petition by District Court is affirmed. At page *28: “Yunkin testified that in the document that passed between him and Lambert, Lambert had written the questions in pencil and he had written all his answers in pencil and then traced over every other word in ink so that they could not be changed. But Lambert’s expert testified that there was no indication of any pencil writing on the 29 Questions and that the questions and answers were written with two different pens. After the Commonwealth had an expert from the Pennsylvania State Police crime lab examine the document, Lambert and the government entered into a stipulation that there were no erasures or graphite on the document. The Commonwealth conceded that if its expert were called to the stand, he would essentially agree with Lambert’s expert.” Lambert’s expert also testified that Yunkin indeed had handwritten the questions. Another District Court judge had said Lambert was innocent and that the government’s conduct was “the

worst case of prosecutorial misconduct in English-speaking experience.” The Court of Appeals said that these findings were insupportable.

COMMENTARY: Several skills in questioned document examination were involved besides handwriting identification, which appears to be incidental and only supportive of the writer’s own testimony.

The opinion of Judge Dalzell on April 21, 1997, in the Federal District Court *habeas corpus* can be downloaded from the Internet. Document examination evidence is discussed in the section, “The Commonwealth’s use of perjured testimony,” sub-section, “2-3. The ‘29’ questions were not altered, The Commonwealth knew it, and never took remedial measures.” After a plea bargain, Yunkin testified at trial that the questions were altered after he had written his answers. Defense and Commonwealth document examiners agreed there was no alteration of the document. Later, Yunkin’s plea bargain to hindering apprehension was negated because of this perjury, and he pled to third degree murder. The trial judge and Lambert’s defense counsel were not informed of the perjury. In another event regarding expert testimony, without defense counsel’s permission the prosecutor before trial talked to the defense medical expert on the autopsy of the victim, explaining the difficulty of future business between them. Changing his opinion, the expert at trial would not rule out inability of the victim to implicate defendant with her dying words. The expert’s business with the prosecutor’s office more than tripled the next year, going from \$11,829.00 to \$41,919.00.

Ries began as document examiner with the Philadelphia Police Department, then with the Philadelphia District Attorney’s Office, and lastly, after a stint in private practice, with State of Ohio, Bureau of Criminal Investigation Crime Laboratory.

Lambert seems to have been left with her conviction and sentence, and presumably all others breathed a sigh of relief at new-found freedom to maintain their practices, while Lambert’s medical expert can be comforted with his increased business from the prosecutor’s office.

287. *U.S. v Mitchell*, conviction vacated and remanded for new trial, 145 F.3d 572, 1998 U.S. App. LEXIS 9714, 49 Fed R Evid Serv (Callaghan) 361 (3 Cir 1998); on remand, 96-407-CR (E.D. PA Sept. 13, 1999); motion for new trial denied, 199 FS2 262, 2002 US Dist LEXIS 6270 (E.D. PA 2002); affirmed, 365 F.3d 215, 2004 U.S. App. LEXIS 8474 (3 Cir 2004); certiorari denied, *Mitchell v U.S.*, 2004 U.S. LEXIS 7358 (US 2004)

In 145 F.3d 572, the central issue was admissibility of an anonymous note of which the defense argued on appeal at page 579: “Mitchell argues that evaluation of the trustworthiness of the anonymous note reveals that the circumstances surrounding its creation do not possess sufficient guarantees of trustworthiness permitting its admissibility into evidence. As he points out, the government failed to produce any evidence as to who authored the note or the circumstances under which it was written. Thus, the government failed to meet its burden of showing that cross examination of the author of the note would have been of marginal utility to Mitchell.”

In 2004 U.S. App. LEXIS 8474, extensive discussion is given to the several *Daubert* factors and the admissibility of expert fingerprint evidence. Appellant contended that his experts who were “undoubtedly qualified” were erroneously precluded by the Trial Court from giving their opinions in rebuttal to the Government’s fingerprint expert evidence. However, they were to testify that forensic fingerprint identification was not a science, which was irrelevant. The evidence did not have to be scientific to be admissible. *U.S. v Velasquez* is cited by appellant in support of his position, but the Court of Appeals explains that *Velasquez* addresses a different issue of admissibility of expert testimony. At [*93] the three challenges the defense could have made are given. First was to challenge the specific identification of Mitchell’s prints, and second to attack the reliability of latent fingerprint identification in general by addressing one or more factors testing reliability. The third choice, the one they made, was to put on a witness to say that it was not a science, and that one the Trial Judge forbade as irrelevant to admissibility or reliability.

The three defense experts, who were fully qualified to testify to the immaterial and inadmissible theory that forensic fingerprint identification is not a science, were Dr. David Stoney of McCrone Research Institute in Chicago, Prof. James Starr of George Washington University, and Simon Cole, a post-doctoral fellow at Rutgers University.

COMMENTARY: 145 F.3d 572 is offered as background to the later decision. The case report at 365 F.3d 215, 2004 U.S. App. LEXIS 8474, is an excellent study in a thorough-going review of a *Daubert* hearing upon appeal. There are other issues addressed in the report, such as the Government not disclosing solicitation of studies to validate fingerprint identification and why that was not ground for reversal, so the entire case report is recommended for study by both attorneys and experts who want to understand how to cover all factors that are used to determine reliability.

288. *U.S. v Rutland*, 372 F.3d 543, 2004 U.S. App. LEXIS 12432, 64 Fed. R. Evid. Serv. (Callaghan) 833 (3 Cir 2004)

The District Court held a *Daubert* hearing and ruled the government’s handwriting expert, Gus Lesnevich, and the defense anti-expert witness, unnamed, both qualified to testify at trial. All that is said of the latter is: “The defense expert attacked the general reliability of handwriting analysis.”

The issue raised on appeal was that permitting a highly qualified expert to express an opinion on the ultimate issue was unfairly prejudicial. The Court of Appeals upheld the Trial Court in permitting just that on basis that the law was that expert qualifications can be considered in deciding weight to be given an opinion, and that a ruling that highly qualified experts may not give opinions on the ultimate issue would result in the absurdity that attorneys would have to search for less than highly qualified experts in order to solicit such opinions.

COMMENTARY: Once more a Court of Appeals upholds admissibility of handwriting expertise while none that I know of has ever ruled to the contrary, though

individuals proffered as experts have not been found sufficiently qualified. The latter assumes an admissible standard against which the individual is measured and found wanting in a particular instance.

The little sentence on the defense expert provides occasion to return to a theme I have expressed before. There is no efficacy in a general attack, but only in why this expert in this case regarding this opinion about this handwriting is specifically unreliable. Only a genuine expert in the special field in question can provide a client with the latter. Thus, if the Rutland defense “expert” had researched the opposing expert’s trial experience, he might have found *U.S. v Frame*, U.S. District for the Eastern District of Texas, Marshall Division, Criminal Docket No. 2:99CR-2. At the first trial which ended with a hung jury, Mr. Lesnevich testified that defendant had written at least part of many incriminating documents. At the second trial before The Honorable T. John Ward, on May 23, 2000, Mr. Lesnevich again appeared as handwriting expert for the prosecution. On cross-examination, at page 133 of the trial transcript of his testimony, lines 20-24, this admission finally occurred:

“Q. Well, when you say it’s a possibility, you’re telling us, in effect, in plain English, ‘I can’t tell you either way if he wrote or didn’t write part of those tickets I examined’?”

“A. That’s correct.”

The jury acquitted Mr. Frame of all charges. However, that did not prevent the same expert from testifying with assurance in the subsequent civil case that Frame had written the same tickets. I offer this as only one example of the many potentially impeaching things that the anti-expert experts are too inept to provide to a defense attorney while they testify to their incomprehension as to how others can know more and be more competent than they.

2005

289. *U.S. v Mornan*, 413 F.3d 372, 2005 U.S. App. LEXIS 13043, 67 Fed. R. Evid. Serv. (Callaghan) 754 (3 Cir. 2005)

Kirsten Jackson, a forensic document examiner with the United States Postal Inspection Service, testified as to her qualifications, method and ability. She gave an explanation why she concluded that Mornan definitely wrote four of 21 exhibits and “probably” wrote two others. For 15 other exhibits she could only say there were similarities to Mornan’s handwriting. There was no objection to her qualifications of admissibility.

COMMENTARY: The Third Circuit’s *Rosario* decision is cited to explain the meaning of “probable” as used by Jackson. Except the Court misstates it thus: “[T]here are also a number of irreconcilable differences and the examiner suspects that they are due to some factor but cannot safely attribute the lack of agreement to the effect of that factor.” According to recognized authorities, such as Ordway Hilton, a single

“irreconcilable difference” prevents even a probable identification. The case report indicates that Jackson was very thorough in her work and very prudent in expressing her opinion.

2006

290. *U.S. v Zavala*, 190 Fed. Appx. 131, 2006 U.S. App. LEXIS 15848 (3 Cir. 2006)
COMMENTARY: A handwriting expert testified that Zavala had addressed a package.

2007

291. *U.S. v Hanner* (3 Cir. 2007)
COMMENTARY: SWGDOC lists this case as one in which handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

2011

292. *Pabon v Mahanoy*, 654 F. 3d 385 (3 Cir. 2011)
At page 390: “At trial, Pabon attempted to repudiate his confession. He presented testimony from a forensic document examiner that the signature on his confession was unlikely his own.... In rebuttal, however, the DA presented its own document examiner who testified that the signature on the confession was likely Pabon’s.”

COMMENTARY: A routine case of admissibility of two experts, one of whom was definitely wrong. Which one? Apparently the jury thought the latter was correct, since they convicted, and the case report said the confession was the strongest evidence the prosecution had.

4. Fourth Circuit.

1987

293. *Winslow v Murray*, No. 87-7147, United States Court of Appeals, Fourth Circuit, Dec. 18. 1987. Unpublished disposition.

Winslow maintained that his criminal trial resulted in conviction due to ineffective assistance of counsel. One claim of ineffective assistance was failure to investigate the Commonwealth’s handwriting expert’s report and to obtain an expert to testify for the defendant. However, defense counsel at trial had studied the report and consulted an expert who said the Commonwealth’s expert was highly qualified and who advised on how to cross-examine. Defense counsel concluded the expert’s “report was probably accurate.” Defense counsel “was not ineffective for failing to attempt to get the state to

pay for an expert to testify for Winslow at trial.” A case is cited which says counsel is not ineffective for failing to look for an expert with a favorable opinion after consulting with an expert who gave an unfavorable opinion.

COMMENTARY: Since there was advice on how to cross-examine the Commonwealth’s handwriting expert, one can safely presume there was testimony by the expert.

This is pre-*Daubert*, but it raises an issue that cries out for an editorial comment and that is disapproved of in *Winslow*. With all the current theories about why there is inadequate science and reliability in expert testimony, no alleged authority on the issue has gone to the central cause: shopping by attorneys for favorable opinions. For example, prosecutors who received honest but undesirable opinions from criminalists, went shopping until they ended up with Fred Zane. However, by addressing this central contagion academicians could not inveigle public funds for research, lab equipment, paid vacations masquerading as conferences, lucrative witness fees, ego-enhancing publications and similarly disinterested academic pursuits.

1996

294. *U.S. v Afrifa*, 91 F.3d 134, 1996 U.S. App. LEXIS 35205 (4 Cir. 1996)

Defendant’s *in limine* motion to exclude handwriting expert was denied. He argued failure of Government to disclose the expert’s qualifications, opinion and basis thereof. Court of Appeals said Trial Court properly denied motion *in limine* and forbade argument at trial on nondisclosure, since defendant knew before his second trial that the expert was on the witness list, defendant’s exemplars had been requested, and there was oral disclosure. However, the required request for formal disclosure had not been made. Further, no cut-off date for discovery was set, and the expert’s written report was produced the day before trial, though no formal request was made.

COMMENTARY: The challenge was not made timely. Reading between the lines, one can easily infer that the lady expert, who is unnamed, would have passed muster easily.

295. *U.S. v Brown*, 1996 U.S. App. LEXIS 8695 (4 Cir 1996)

COMMENTARY: Handwriting expert concluded the handwriting of Brown, a convicted felon, was on ATF form to purchase gun.

296. *U.S. v Rahman*, 83 F.3d 89, 1996 U.S. App. LEXIS 10855 (4 Cir 1996)

At [*3]: “Further, defense counsel conceded in his opening statement that Rahman had completed and signed the ATF forms. And, expert testimony confirmed that the handwriting on the ATF forms was Rahman’s and that his fingerprints had been discovered on one of them.”

COMMENTARY: The expert was superfluous given defense counsel’s concession

on the issue.

297. *U.S. v Rivenbank*, 1996 U.S. App. LEXIS 6081 (4 Cir 1996)

Convictions for bank fraud, wire fraud, mail fraud and possession of firearm by convicted felon are affirmed. Several checks and two wills were forged against a man's estate. Thomas Goyne testified to signatures being traced, simulated, "or some other imitation method."

COMMENTARY: Goyne seems to have done a lot of work on this case. The report is worth reading for the brazenness of Rivenbank and his girlfriend. He made incriminating statements and even filed a complaint with the FBI, presenting to an agent two forged \$150,000 checks on a long-closed account and saying that the heirs were preventing him from having what decedent had given him.

298. *U.S. v Woodbine*, 1996 U.S. App. LEXIS (4 Cir 1996)

COMMENTARY: "The government proved the identity element of the offense through fingerprint and handwriting specialists. Although Woodbine contends the expert testimony was not persuasive, the jury could accept or reject it."

1997

299. *U.S. v Achiekwele*, 112 F.3d 747, 1997 U.S. App. LEXIS 9393 (4 Cir 1997); certiorari denied, *Achiekwelu v U.S.*, 522 U.S. 901, 118 S. Ct. 250, 139 L. Ed. 2d 179, 1997 U.S. LEXIS 5915, 66 U.S.L.W. 3262 (US 1997)

"This case is interesting and somewhat unusual, involving, as it does, the activities of someone who tried to defraud and was himself successfully defrauded by someone else. The criminal proceedings were only directed at the one whose plan produced, from his point of view, favorable results." Defendant presented testimony of a retired FBI handwriting expert who "testified that he had examined two sets of exemplars: the faxed documents that Gupta had received and a set of genuine documents that Achiekwele provided. He further testified that, in his opinion, the same person probably had not signed the two sets of documents."

COMMENTARY: Faxed handwritten documents were permitted to be the subject of expert opinion. The poetic justice is also delightful, in that one con was successfully defrauded and the successful con was successfully prosecuted. Each got his comeuppance.

1998

300. *U.S. v Addair*, 1998 U.S. App. LEXIS 32677 (4 Cir 1998); cert. denied, 1999 U.S. LEXIS 3129 (1999)

COMMENTARY: Regarding records in conviction for violations of Federal Mine

Health and Safety Act, a handwriting expert testified entries were made by defendant but signatures could not be identified “because the signatures appeared to be laboriously prepared, as if they had been traced.” But they had characteristics in common with defendant’s handwriting.

301. *U.S. v Atkins*, 1998 U.S. App. LEXIS 6689 (4 Cir 1998)

Conviction for bank fraud and embezzlement upheld. It was not error to permit bank manager to compare defendant bank teller’s known writing with bank codes found in her cash drawer. At page [*7]: “Atkins also challenges the admission of the piece of paper containing a series of codes and numbers found in her cash drawer.”

COMMENTARY: One not a document examiner was properly permitted to give expert testimony on handwriting. It was a combination of personal acquaintance and testimony from comparison. Further, “a series of codes and numbers” were identified as to its maker. I believe this was a bit of fudging on the rules limiting a lay witness to handwriting.

302. *U.S. v McMahon; U.S. v Associated Health Services*, 1998 U.S. App. LEXIS 11821, 98-1 US Tax Cas (CCH) P50,486, 81 AFTR (RIA) 2295 (4 Cir 1998)

COMMENTARY: A chiropractor was convicted of writing phony prescriptions to defraud health insurers. Handwriting expert evidence was given.

303. *U.S. v Nnadozie*, 1998 U.S. App. LEXIS 32634 (4 Cir 1998)

COMMENTARY: Department of State special agent, William Maher, was called by defense, and said he met twice with defendant to obtain handwriting samples. On cross it was proper to let him answer as to why he took the second samples, that he felt defendant had disguised the first set of samples.

1999

304. *U.S. v Jane Doe*, 1999 U.S. App. LEXIS 21400 (4 Cir 1999)

COMMENTARY: An expert testified that the photo and signature on a Diversity Visa lottery petition that Doe was using were probably not hers.

305. *Gregory v Interstate/Johnson Lane Corp.*, 1999 U.S. App. LEXIS 20862 (4 Cir 1999)

Denying she had signed an arbitration agreement on which her husband’s signature was not disputed, plaintiff “provided the opinion of Mr. Joseph H. Bowers, an experienced handwriting expert with a background in the Federal Bureau of Investigation,” who said both her signatures were forgeries “to a reasonable degree of certainty.”

COMMENTARY: The entire burden of the decision was a legal issue: “The

specific issue in this factually complicated case is whether the district court or an arbitration panel should decide whether the plaintiff agreed to arbitrate her dispute. The district court held that the arbitrator should be able to make that decision. We reverse.”

306. *U.S. v Rollack*, 1999 U.S. App. LEXIS 3201 (4 Cir 1999)

Sgt. Louis Savelli, of NY City P.D., testified as expert in gang codes. A handwriting expert identified defendant as writer of some letters with these codes. Another expert explained to the jury how the translated code messages fit into other evidence.

COMMENTARY: This is an excellent example of how various disciplines can work cooperatively to develop the complete evidence.

307. *U.S. v Ward*, 1999 U.S. App. LEXIS (4 Cir 1999)

COMMENTARY: Handwriting expert testified defendant prepared FedEx shipping documents.

2000

308. *U.S. v John Doe*, 2000 U.S. App. LEXIS 7338 (4 Cir 2000)

It was not error for Government handwriting expert to compare passport application to INS document written by defendant. Nor was it error to read to the jury the indictment containing defendant’s several aliases.

COMMENTARY: Incidentally, the case title lists six aliases, “Ige” being the least popular with defendant.

2001

U.S. v Johnson (4 Cir. 2001)

COMMENTARY: SWGDOC lists this case, tried against Brenda K. Johnson in Alexandria, VA, as one where handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

2002

309. *U.S. v Cole*, 293 F.3d 153, 2002 U.S. App. LEXIS 10788 (4 Cir 2002); cert. denied, *Cole v U.S.*, 2002 U.S. LEXIS 7637 (2002)

Defendant’s handwriting expert “seriously impugned” turncoat witness’ testimony against him. That the prosecutor kept turncoat’s psychiatric history from defense counsel until after Government’s direct case was not commendable but did not violate due process.

COMMENTARY: The jury seemed to believe everything the turncoat said even

when he had been shown to lie and after he had said he testified in hopes of a good deal from the Government.

2003

310. *Bramblett v Commonwealth*, 257 Va. 263, 513 SE2 400, 1999 Va. LEXIS 47 (1999); affirmed in part and dismissed in part, *Bramblett v True*, 59 Fed. Appx. 1, 2003 U.S. App. LEXIS 220 (4 Cir 2003); stay of execution of death sentence denied, certiorari to Court of Appeals denied, 155 L.Ed.2d 533, 123 S.Ct. 1780, 2003 U.S. LEXIS 2916 (2003)

2003 U.S. App. LEXIS 220:

At [*7-8], the prosecution's document expert, Gordon Menzies, testified he "was unable to make a positive match. The prosecution argued, based on other testimony by Menzies, that Menzies was unable to positively identify Teresa's handwriting because she had been under some kind of duress or stress when she wrote the notes. In addition, Menzies found an indented writing on one of the notes and testified that the writing, which was addressed to Bramblett's sons, was very likely written by Bramblett."

COMMENTARY: Apparently Menzies made an EDD study of the documents and also understood the effects of stress or duress on handwriting. The latter enjoys scientific support in the medical literature.

311. *U.S. v Crisp*, 324 F.3d 261; 2003 U.S. App. LEXIS 6021, 60 Fed R Evi Serv (Callaghan) 1486 (4 Cir 2003); cert. denied, *Crisp v U.S.*, 157 L.Ed.2d 159, 121 S.Ct. 220, 2003 U.S. LEXIS 6388 (US 2003)

Conviction for bank robbery was affirmed. Fingerprint and handwriting identification was challenged on appeal on basis of abuse of discretion in admitting it, asserting that neither met *Daubert* factors other than general acceptance. Fingerprint cases are often cited in support of challenges to handwriting expertise and *vice versa*.

While in jail, Crisp tried to pass a note to an accomplice, saying what story he should give about the robbery. Thomas Curran, handwriting expert, identified Crisp as writer of the note. At page 268: "The *Daubert* decision, in adding four new factors to the traditional 'general acceptance' standard for expert testimony, effectively opened the courts to a broader range of opinion evidence than was previously admissible. Although *Daubert* attempted to ensure that courts screen out 'junk science,' it also enabled the courts to entertain new and less conventional forms of expertise."

At page 270 begins consideration of handwriting, with the sadly epidemic idea that no two people write exactly alike and thus experts can identify a writer. "In addition, he [Crisp] asserts that handwriting experts have no numerical standards to govern their analyses and that they have not subjected themselves and their science to critical self-examination and study.

"While the admissibility of handwriting evidence in the post-*Daubert* world appears to be a matter of first impression for our Court, every circuit to have addressed

the issue has concluded, as on the fingerprint issue, that such evidence is properly admissible....” [Citations omitted.]

At page 271, Curran is quoted as saying that standards are the uniqueness of certain similarities and the quality and skill of examiner. He used size, spacing of letters, and misspelling, but mostly form of letters. The Court noted: “To the extent a given handwriting analysis is flawed or flimsy, an able defense lawyer will bring that fact to the jury’s attention, both through skillful cross-examination and by presenting expert testimony of his own. But in light of Crisp’s failure to offer us any reason today to doubt the reliability of handwriting analysis evidence in general, we must decline to deny our courts and judges such insights as it can offer.”

Dissent says, in essence, that it must meet all Daubert factors, and that it fails even general acceptance since only handwriting experts accept it. District courts are cited that reject it, and critics are quoted to support the dissent. The claim is made that academics will discover scientific truth since they are disinterested financially.

COMMENTARY: The critics do not like the idea that opposing attorneys are given the burden of proper cross-examination to expose flawed expert opinions in handwriting. What else in the world are they being paid for? But the critics are right to dislike this idea, since to make a proper cross-examination of an incompetent expert in any field the attorney needs to consult with a competent member of that same field, not those who posture as experts on all expertise and even flunk expertise in their own field when the bases of their opinion and performance are closely studied. As to academics being financially disinterested, does not Stelmach in Starzecpyzel claim qualification to offer scientific testimony regarding handwriting precisely because he can garner grant money to do research? And getting to testify so often, as Saks and Denbeaux do as anti-expert experts, does not seem to be disinterested pursuant either to one’s financial well-being or to one’s ego satisfaction.

312. *U.S. v Lewis*, 220 F. Supp. 2d 548, 2002 U.S. Dist. LEXIS 17062 (S.D. WV 2002); affirmed, 75 Fed. Appx. 164, 2003 U.S. App. LEXIS 19077 (4 Cir 2003)
220 F. Supp. 2d 548:

Court summary says in part: “(1) government’s handwriting analyst did not qualify as expert witness....” Anonymous letters contained powder which recipients feared was anthrax. Photocopied handwriting was admitted by a lady to be hers from letters she wrote to her former boyfriend, Lewis. Lewis was arrested, whose pretrial motion to exclude handwriting expert John W. Cawley, III, was granted.

At page 553 the usual “central tenet” is given. Through three columns, Cawley’s *Daubert* testimony is summarized, and at page 554 it ends with: “In sum, Mr. Cawley could not testify about the substance of the studies he cited. He did not know the relevant methodologies or the error rate involved in these studies. His bald assertion that the ‘basic principle of handwriting identification has been proven time and time again through research in [his] field,’ without more specific substance, is inadequate to demonstrate

testability and error rate.” Then his assertions of 100% passage of proficiency tests and that all his colleagues always pass and always agree with each other and always get it right are cited as undermining his credibility. He gave no “substantive explanation of the standard used in the field” and “stated that stroke similarities are required to make a positive match” but was unclear as to how many were needed. Nor was there an explanation why 25 exemplars are the standard.

COMMENTARY: This is another case to study closely in order to learn what not to do as a witness in a *Daubert* hearing. The witness who is citing professional literature should know it from personal study, have full bibliographic citations and copies of the most important studies relied on. Did Mr. Cawley testify from recall of hearsay by others who studied the applicable texts? The exclusion was not appealed by the Government.

Cawley’s testimony on direct was summarized in six points, the third of which regarded research studies he could neither name nor describe adequately:

“These research studies are subject to a peer review process, namely symposia and annual meetings of the American Society of Questioned Document Examiners. Mr. Cawley also discussed a system in his own office by which each document examiner's work is reexamined by another examiner. Tr. at 6-7.”

The copies of schedules and papers for ASQDE meetings that I have acquired show presentations mostly of 15 to 20 minutes, hardly enough time to describe what one is talking about much less to talk about it. As stated elsewhere in this compilation, if someone else, who is using the exact same method and procedure, reexamines another’s work, neither will ever know whether they made a mistake since both will simply make the same mistakes.

Of painful thought is that Cawley is said to have been training new document examiners.

313. *U.S. v Wiggan*, 2003 US App LEIS 2407, 58 F Appx 975 (4 Cir 2003)

Defendant moved that Government’s handwriting expert ought to be excluded due to failure of timely disclosure. The disclosure one week before trial did not make defendant suffer “substantial prejudice” and allowed him sufficient time to obtain his own handwriting expert. Thus there was no abuse of discretion by Trial Court in denying the motion.

COMMENTARY: A case of routine admissibility since the challenge was not on the basis of unreliability of the expert testimony. On the other hand, it might have been “substantial” prejudice to snooker defense into a last minute assessment of evidence the prosecution had time to address at leisure and with greater resources and personnel. In its list SWGDOC notes that the handwriting expert’s testimony had limitations placed on it by the judge. I did not notice that in 2003 US App. LEXIS 2407, but I cannot say it was not so.

2005

314. *U.S. v Smith*, 2005 U.S. App. LEXIS 23798 (4 Cir 2005)

Smith challenged the admissibility of testimony by Carl McClary, “an expert on handwriting comparison analysis.” Citing its decision in *Crisp*, the Court said: “Here, as in *Crisp*, the defendant did not present any evidence that handwriting analysis was unreliable.” It is not required that it have the status of scientific law, and courts need not “expend scarce judicial resources reexamining a familiar form of expertise every time opinion evidence is offered.”

COMMENTARY: In other words, forensic handwriting expertise as a discipline has sufficiently proven itself as far as the Fourth Circuit is concerned. As always, that does not guarantee that an individual expert is offering reliable testimony.

2006

315. *U.S. v Jackson, a/k/a Dorothy Winston*, 170 Fed. Appx. 812, 2006 U.S. App. LEXIS 4236 (4 Cir. 2006)

“A document examiner from the U.S. Secret Service concluded that Jackson probably filled out the patient information for 651 of the [prescription] forms in the name of 66 different patients. A drug enforcement agent testified that the prescriptions were for a total of 48,035 [*5] pills of drugs, including Oxycontin, that contained oxycodone.” She was convicted for, among other offenses, conspiracy to distribute prescription painkillers.

COMMENTARY: Oxycodone has one of the longest lists for prescription drugs as to contraindications, drug interactions and adverse reactions. It does contribute mightily to the economy. The pharmaceutical industry has persuaded doctors to prescribe the nasty stuff on a massive scale. A retired court reporter told me of the large number of cases in criminal court of patients obtaining a prescription, then selling half tablets for as much as \$20/each. Thus a need for large public expenditure to hire many law officers, prosecutors, defense attorneys, court facilities and personnel, and medical personnel needed to treat the bad physical results of taking the stuff, and I use “stuff” advisedly. It is highly addictive, so more medical care, and maybe more drugs from the same pharmaceutical manufacturers to “cure” the addiction and its potentially extensive damage to body and mind. At least for me, this greatly reduces faith in the FDA protecting us by banning drugs with nearly guaranteed damage to any user.

2007

316. *U. S. v Uhrich*, and related cases, 228 Fed. Appx. 248, 2007 U.S. App. LEXIS 12731 (4 Cir. 2007)

COMMENTARY: There were three defendants. Of the two other than Uhrich, one presented handwriting expert evidence to attack the other. However, though Uhrich

claimed reversible error because of prejudice to him, there was no reversible error. Economy of court time justified evidence in one simultaneous prosecution that was irrelevant to another.

2008

317. *U.S. v Kittrell*, 269 Fed. Appx. 338, 2008 U.S. App. LEXIS 5659 (4 Cir. 2008)

COMMENTARY: A questioned documents examiner opined that Kittrell “probably” wrote the demand note used in a bank robbery.

2014

318. *U.S. v Sebolt*, No. 13-4093 (4 Cir. 2014)

While serving time for an offense related to child pornography, Sebolt was prosecuted for a flyer soliciting pornographic pictures of children. Since his defense was “to point the finger” at the prisoner being released who was to mail the flyers, tying them to Sebolt was necessary. This had to be done by a handwriting expert. Documents bearing Sebolt’s handwriting were used by the expert who testified that “it was highly probable that the same person who drafted the letter to Ms. Jinadari, which was signed in Sebolt’s name and BOP number, also created the flyer.”

COMMENTARY: This compilation has a few cases of incarcerated individuals carrying on criminal activities from inside the prison. Those who work there surely are on the continual outlook for such things and on how to prevent and detect them. It seems like an arms race but without the explosive nature of armaments. Every new defense inspires a new offense, and every new offense inspires a new defense. I wonder if some engage in the contest as the challenge of a game wherein one has the delight of bettering the opponent.

To hide sample photos Sebolt had secret compartments inside greeting cards and instructed Ms. Jinadari in Sri Lanka to use the same in selling him new ones. Detection of such practices would, I believe, be another task for document examiners.

In *Hamburg v State*, 820 P2 523 (WY 1991), discussed later, handwriting expertise was the sole factual evidence of Hamburg’s guilt. Here, the key link between Sebolt and the criminal act was handwriting expertise. In *Hamburg*, where the handwriting expert said he most probably wrote the incriminating evidence, conviction was reversed and rendered, because only the expert’s term “definitely” would equate to “beyond a reasonable doubt.” Thus it seems to me Sebolt was convicted on less than evidence beyond a reasonable doubt, unless The Fourth Circuit and the Wyoming Supreme Court have different methods and/or capacities for reasoning.

5. Fifth Circuit.

1993

319. *U.S. v Dockins*, 986 F. 2d 888 (5th Cir. 1993)

At page 894: “Nancy Davis, a document examiner, testified that the signature of Carl Smith on the fingerprint card was written by Dockins.”

COMMENTARY: Besides being a case of routine admissibility, it seems to be a rather non-routine case of self-representation. Defendant, choosing to represent himself, wanted a third incompetency hearing and a mistrial if it was not granted. Footnote 1 describes the situation:

“Outside the presence of the jury, Dockins told the court:

‘I don’t know how to represent myself. And the law — the states if you don’t want an attorney representing you, you can explain that to the jury, the defendant’s conduct, or whatever, or however it states, that it’s going to be a mistrial.’

“The court responded:

‘Well, it’s obvious to the Court what you’re attempting to accomplish here.’”

If you enjoy tales of self-created melodramas, you might like to read the entire case report.

1995

320. *U.S. v Musa*, 45 F. 3d 922 (5 Cir. 1995)

COMMENTARY: As elegant evidence of how incidental an expert’s testimony can be, we need to arrive at Footnote 2 to read: “An expert document examiner compared the writing on the Hotel Guide with an exemplar taken from Musa and testified that Musa wrote both.” That is all on that issue.

1996

321. *U.S. v Crouch and Frye*, 835 FS 938 (S.D. TX 1993); affirming dismissal of indictment, 51 F.3d 480 (5 Cir 1995); reversed and remanded, 84 F.3d 1497, 1996 U.S. App. LEXIS 12536 (5 Cir 1996); petitions for writs of certiorari, 1996 U.S. App. LEXIS 23153; in *Crouch and Frye v U.S.*, 519 U.S. 1076, 117 S. Ct. 736, 136 L. Ed. 2d 676, 1997 U.S. LEXIS 306, 65 U.S.L.W. 3487 (US 1997)

1996 U.S. App. LEXIS 12536:

In prosecution for alleged loan and savings offenses, Frye contended that loss of the original document in question prevented defense handwriting analysis from proving with the copy that the signature was genuine and he did not make it. However, the Government did not try to prove the opposite, and the charge was not dependent on that issue. Further, Footnote 41 ends: “There was no evidence that any handwriting expert had

ever examined the copy or opined that no handwriting analysis could be based on it.”

COMMENTARY: Although no handwriting expert had testified in District Court’s hearing on motion to dismiss, I include this case lest it be cited as authority that a copy of a signature or handwriting cannot be the subject of expert examination and opinion. On the other hand, it belongs in this list in so far as a criminal defense, which typically charges the expertise with unreliability, premises its argument on the assumption that the expertise is reliable enough to prove the signature in copy to be genuine.

1997

322. *U.S. v Stevenson*, 126 F.3d 662, 1997 U.S. App. LEXIS 28697 (5 Cir 1997)

FBI experts testified that Stevenson’s fingerprints were on a threatening letter and that the letter and envelope were written by him. Another agent testified that he had admitted writing the letter.

COMMENTARY: Because of Defendant’s admission not quoted here, the experts would seem to have been superfluous.

323. *U.S. v Thompson*, 130 F.3d 676, 1997 U.S. App. LEXIS 34136, 48 Fed R Evi Serv (Callaghan) 447 (5 Cir 1997)

In jail on contempt charges, Thompson solicited another inmate to hire a hit man to do in the judge who put him there. “Gerber, an admittedly unsavory character, wrote letters to the FBI and to Judge Hoyt, alerting each to the threat Thompson posed.” Thompson wrote notes to Gerber related to the proposition. At trial an expert testified that the handwriting matched Thompson’s.

COMMENTARY: Is this more evidence of the claimed moral degeneration of the country, in that we can no longer say flatly that there is honor among thieves?

1999

324. *U.S. v Morrow, et al.*, 177 F.3d 272, 1999 U.S. App. LEXIS 10222 (5 Cir 1999); cert. denied, 1999 U.S. LEXIS 8160 (US 1999); cert. denied, 2000 U.S. LEXIS 418 (US 2000)

COMMENTARY: A handwriting expert testified defendant Freeman prepared false documents in question.

2000

325. *U.S. v Bates*, 240 F.3d 1073 (table), 2000 WL 1835092 (5th Cir. 2000)

Dr. D. Michael Risinger had this unreported case in his compilation, *51 Tulsa Law Review*, “Appendix: Cases involving the reliability of handwriting identification expertise since the decision in *Daubert*,” 477-595 (2007). I have not seen the report, but from Dr. Risinger’s discussion there seems there is not much there to say much about.

COMMENTARY: A case of routine admissibility, and on another point I must agree with the critics, the routine cases on admissibility must be seen to be some degree of routine neglect by defense counsel and routine, habitual siding by judges with the prosecution. My presumption that indeed the judicial obligation of determining expert reliability was performed might have to yield to belief that occasionally the bench goes for the easier, routine predetermination.

326. *U.S. v Perez*, 217 F.3d 323, 2000 U.S. App. LEXIS 15120, 55 Fed R Evi Serv (Callaghan) 151 (5 Cir 2000); 2000 U.S. LEXIS 7279 (US 2000)

COMMENTARY: Affirming a conviction for aiding and abetting the harboring of an undocumented alien. A notebook “indicative of an alien smuggling operation” was found pursuant to a search warrant. Footnote 4 states: “The government’s expert testified that the writing in the notebook matched Perez’s handwriting.”

2003

327. *U.S. v Garcia-Flores, et al.* (5 Cir. 2003)

COMMENTARY: SWGDOC gives this case as one in which handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

328. *U.S. v Nadurath*, 2002 U.S. Dist LEXIS 8777, 2002 WL 1000929 (U.S. DC N.D. Tex. 2002); affirmed, 66 Fed. Appx. 525 (5th Cir. 2003)

Defendant’s objection to admission of fingerprint and handwriting expert testimony are overruled and motions for in limine hearing for both denied. Defendant failed to provide any information calling reliability into question.

A source refers to this case in this way: “Although there was apparently overwhelming evidence from multiple sources that defendant Lewis had sent the envelopes in question, the prosecution desired to gild this lily with the testimony of John W. Cawley, a ‘questioned documents analyst’ so certified by the US Postal Inspection Service after training....”

COMMENTARY: No analysis is given, but, contrary to the insinuation of the critics when they discuss a ruling that is contrary to their liking, that does not indicate that the Court gave inadequate consideration to the matter, much less ruled incorrectly. On the other hand, victory came to the prosecution and its expert through basic bungling by the defense counsel who failed to give any good reason for the challenge.

2004

329. *Morrison v Weyerhaeuser Company*, Civil Action No. H-03-1033 (U.S. DC S.D. TX 2004); affirmed, 119 Fed. Appx. 581, 2004 U.S. App. LEXIS 25607 (5 Cir. 2004)

In suit by an employee over his dismissal allegedly in violation of the law,

summary judgment was granted upon motion by Weyerhaeuser. Morrison relied on several factors in his claim that granting the motion was improper, one being handwriting expert evidence: “[*9] Morrison also offered the testimony of a handwriting expert, Jeannett. Hunt, who opined that Morrison’s purported initials on a June 4, 2002, non-routine task check sheet were falsified. As the district court correctly noted, this evidence did not raise a material issue of fact with regard to pretext, because Morrison has failed to explain its relevance to the accident or to his termination.”

COMMENTARY: An expert can provide factual evidence but not its legal link to what has to be established. We are on occasion brought to give irrelevant evidence or evidence whose relevance the attorney fails to establish. This failure is credited to the client who chose the failing attorney to act in his name and on his behalf. Ms. Hunt is a member of National Association of Document Examiners.

330. *U.S. v Chavful*, 100 F Appx 226, 2004 U.S. App. LEXIS 7642 (5 Cir 2004)

It was not error to let an expert in gang language explain the meaning of a letter Chavful wrote nor to let a handwriting expert say he had disguised the exemplars he gave for the FBI.

COMMENTARY: A case of routine admissibility that applies the rule that disguise of exemplars can be considered by the fact-finder as consciousness of guilt and the long-standing rule that an expert in handwriting may testify as to disguise of same. The linguistics testimony was by an expert who had specific expertise in gang language.

2005

331. *U.S. v Johnson* (5 Cir. 2004)

COMMENTARY: SWGDOC gives this case against Shawn Joshua Johnson as one where handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

2006

332. *U.S. v Garza*, 448 F.3d 294, 2006 U.S. App. LEXIS 10453, 70 Fed. R. Evid. Serv. (Callaghan) 54 (5 Cir. 2006)

Defense called handwriting expert Linda James who would testify that a witness’ signatures on Garza’s alleged confession and a search warrant did not match that witness’ known signatures. Prosecution objected that James’ testimony was not disclosed according to a court order and so should be excluded. Additionally, James testified she was given only photocopies of the witness’ exemplar signatures though she had asked for originals. The trial judge ruled that the copies supplied to her made her testimony unreliable. There was no challenge to her qualifications, and her proffered testimony was held to be relevant.

COMMENTARY: I am more and more coming to the view that for the most part challenges to opposing expert testimony are because the challenging party knows full well the opinion is correct. Whatever the justification is that the attorney is duty bound to earn his living by fiercely defending the position of his client, however illegal and even criminal it might be, I submit there is a lack of morality somewhere in the endeavor.

Of a more important note for all expert witnesses, James acted correctly by asking for the better material and by doing the best she could with what the attorney provided. Thus, she offered a technically correct opinion. When you find yourself in such a situation, and I assume you would be providing a technically correct opinion, explain to the court that what you rely on are those traits that cannot be credited to the copying process, that they necessarily must be credited to the original. Explain that, although every copy loses something of the document being copied, the copying machine is engineered to render a faithful reproduction, that you rely only on those characteristics of the document that the machine does not alter. Apparently the defense attorney not only failed James before trial but failed to solicit the information that would have established the degree of reliability of her proffered testimony.

Ironically, the case report said that the non-expert jury was fully empowered and capable of doing what the trial judge incorrectly said a handwriting expert cannot. The body of our law is rich in ironies, because it is a very complex amalgam created by thousands of humans over many centuries. Yet all in all I believe it is as fine and fair a system of justice as any human society has created. Ms. James is a member of NADE and served as president in 2009-2013.

Dr. Risinger's discussion of this case is perceptive regarding contrasting treatments of proffered expert evidence from defendants versus from the prosecution. The disparity in resources and ability to obtain evidence is also markedly unbalanced. I would add a point to his analysis, that Defendant need only raise a reasonable doubt, and what Ms. James had to work with was sufficient for that. Unfortunately, the delay by defense counsel in either involving Ms. James soon enough or in producing her report to the prosecution doomed the proffer. And that, to my mind, should have been grounds for a successful appeal on basis of inadequate assistance of counsel and maybe even legal malpractice. It would be interesting to read the excuses for rejecting such an appeal, since even appeal court judges could not say it was a clever tactical move and keep a straight face.

333. *U.S. v Pena* (5 Cir. 2006.)

COMMENTARY: In a list from SWGDOC this was given as a case wherein a *Daubert* motion was denied. I have not been able to locate a copy of the decision.

2009

334. *U.S. v Clark*, 577 F. 3d 273 (5th Cir. 2009)

COMMENTARY: Defendant took fees as a tax preparer but filed false returns. An IRS handwriting expert offered evidence of Clark's writing on some documents.

335. *U.S. v Robinson*, 2009 U.S. App. LEXIS 6703 (5 Cir. 2009)

COMMENTARY: A document examiner testified that Robinson endorsed forged checks.

2012

336. *U.S. v Fox*, No. 11-40191 (5 Cir. 2012)

Handwriting expert Kenneth Crawford gave testimony for the Government, but nothing is said of its nature. However, in *U.S. v Towns*, 718 F.3d 404 (5 Cir. 2013), Footnote 4 reads:

“In the unpublished opinion of *United States v. Fox*, 487 Fed.Appx. 165 (5th Cir.2012), this Court per curiam affirmed a pseudoephedrine conviction where logs were admitted at trial. This Court found that ‘pseudoephedrine logs bearing the signature “Tina Fox” for each possession conviction as well as the testimonies of Agent Rodney Tandy, handwriting expert Kenneth Crawford, and co-conspirators’ sufficient to support the convictions of Fox. Id. at 166, 167. This Court further said, ‘[e]ven if Fox is correct that her possession conviction on Count 47 was supported in part by a pharmacy log that was not properly verified, the jury was free to rely upon the log in question because, as Fox concedes, she failed to object to its admission into evidence.’”

COMMENTARY: There is at least a waft of inadequate defense work.

2014

337. *Kramer v JP Morgan Chase Bank, N.A.*, No. 13-50920 (5 Cir. 2014)

COMMENTARY: Kramer presented the testimony of a handwriting expert that her signatures on certain documents were fraudulent. However, the trial court granted Chase's motion for summary judgement on all issues, which was affirmed.

6. Sixth Circuit.

1993

338. *U.S. v Susskind, et al.*, 4 F.3d 1400 (6 Cir. 1993)

Two document experts testified to different aspects of the documents, and I quote the full description of their testimony at page 1404:

“The government presented numerous witnesses in addition to Mr. Janice. Among the government’s witnesses was the questioned document examiner from the Michigan State Police, who testified that he had analyzed loan documents from Rumler I bearing the dates June 3, 1986; August 5, 1986; and December 5, 1986. He went on to give it as his opinion the documents had all been prepared at the same time and probably by the same person; that the December document had been signed after having been placed on top of the June and August documents; and that all three documents, which were very fresh looking, had been folded together at the same time.

“A second expert witness testified that the typewriter and printwheel from Mr. Susskind’s law office produced the same horizontal spacing, vertical spacing, line spacing and alignment as found on the purported loan documents. This witness testified further that the correction ribbon from Mr. Susskind’s office had been used to correct all three documents. Based on his analysis of the ink from the ballpoint pen with which Mr. Rumler had signed the documents dated June and August of 1986, finally, the witness testified that the documents could not have been signed before 1987, because the ink was not manufactured until that year.”

COMMENTARY: Though there is no handwriting identification, I include this case since it embraces a wealth of tasks performed by document examiners.

1995

339. *U.S. v Oyairo*, 53 F.3d 332 (Ct. App. 6 Cir. 1995)

Oyairo was convicted of entering a sham marriage in order to circumvent the immigration laws. One error argued on appeal was testimony by document examiner Nancy Berthold. It was contended that Berthold testified outside her area of expertise in several regards. One was that she testified to falsity in signatures on Nigerian documents when she did not have exemplars from the individuals whose signatures they were. However, she testified to indicia of falsity in the signatures and the inferences to be made therefrom. This was what handwriting experts did. This and all other challenges to her testimony were found to be without merit.

COMMENTARY: This is another case where, if the defense had consulted with a competent and perceptive document examiner, it could have made better challenges to Berthold’s testimony, though the same examiner would not have given any guarantee of success given the candidness and caution with which the case report indicates she expressed herself. For example, she might have been asked about the indicia of falsity in signatures also being characteristic of some people’s genuine writing. This might have cast some doubt in the jury’s mind, though it might have well asked itself could so many people, all signing the same document, have exhibited the same complex of so many somewhat rare handwriting traits.

1996

340. *Equal Employment Opportunity Commission v Allen Petroleum Company of East Tennessee, Inc.*, 1996 U.S. App. LEXIS 16824 (6 Cir 1996)

COMMENTARY: Company appealed award against it, and Court of Appeals reversed and remanded. Footnote 1 reads: “Brown denies having any knowledge of the reprimand or discussing it with Seymour. The written reprimand does, however, bear Brown’s signature, according to the testimony of a handwriting expert.”

341. *U.S. v Waters*, 1996 U.S. App. LEXIS 25281 (6 Cir 1996)

“An expert at trial testified that the KKK letter was written by the same person who addressed the first package, although neither Sands nor Waters could be identified as the writer. However, Water’s handwriting was identified as similar to the writing of the word ‘powder’ on a legal pad with a diagram.”

COMMENTARY: This is an example of slovenly use of terminology. “Identified” means an opinion of who the writer was. “Identified as similar” only says they look alike in some way. Every handwriting ever done can be said to be “identified as similar” to every other handwriting ever done. Minus all similarity we could not say both are handwritings. For such a witness to use such an expression, assuming the witness and not the judge authoring the court’s finding of fact came up with the phraseology, opens the door for the cross-examiner to nit-pick away at every tiny bit of a dissimilar feature.

1997

342. *U.S. v Jones*, 1997 US Ap LEXIS 3696; 1997 Fed Ap 0082p; 46 Fed R Evid Serv (Callaghan) 885; 107 F.3d 1147 (6 Cir 1997); cert. denied, 1997 U.S. LEXIS 4185; 521 US 1127, 117 S.Ct. 2527 (1997)

Handwriting expert evidence is a technical skill, and its reliability is to be decided on a case-by-case basis. Federal Rules of Evidence 901(b)(3) provide for authentication of a document by “[c]omparison . . . by expert witnesses with specimens which have been authenticated.” Grant Sperry of USPS was Government expert.

107 F.3d 1147, at page 1157: “We are quite convinced that handwriting examiners do not concentrate on ‘posing and refining theoretical explanations about the world,’ *Daubert*, 509 U.S. at 590, 113 S.Ct. at 2795, but instead use their knowledge and experience to answer the extremely practical questions of whether a signature is genuine or forged.” With lots of quotes from friend and foe alike, the Court says in footnote 10: “In deciding that handwriting analysis does not rest on ‘scientific knowledge,’ we do not decide whether other tasks performed by forensic document examiners...are based on scientific knowledge.”

Then at page 1160: “In short, expert handwriting analysis is a field of expertise under the Federal Rules of Evidence. This decision, however, does not guarantee the reliability or admissibility of this type of testimony in a particular case. Because this is not scientific expert testimony, its reliability largely depends on the facts of each case.”

Then later, to support the expert's admissibility: "To put it bluntly, the federal government pays him to analyze documents, the precise task he was called upon to do in the district court." Then the Court says Sperry outlined his procedure and used enlarged exhibits which enabled the "jury to observe firsthand the parts of the various signatures on which he focused." At page 1161: "But we wish to emphasize that just because the threshold for admissibility under Rule 702 has been crossed, a party is not prevented from challenging the reliability of the admitted evidence."

COMMENTARY: Courts are meant to resolve real disputes in a reasonable and common sense fashion, not serve the ego and academic impulses of inventors of new scientific myths about what truth is and is not. In effect, the anti-expert experts propose that we all suffer any injury unless and until alleged scientists like them tell us it is their considered opinion that we may do otherwise. The forger is left all practical, time-tested means of fraud, but unwittingly the critics say we must forego all practical, time-tested means of countering the forger's fraud. They assert this on the basis of theories which are neither practical nor time-tested, much less established in any way other than general acceptance among those who are willing to swallow mass belief in the collective word of academicians. In brief, whereas *Daubert* ended the *Frye* rule of general acceptance, only general acceptance supports the criteria that *Daubert* added to general acceptance.

1998

343. *U.S. v Dedhia*, 134 F.3d 802, 1998 U.S. App. LEXIS 854, 1998 FED App 0026P (6 Cir 1998); application for stay denied, in *Dedhia v U.S.*, 118 S. Ct. 1838, 1998 U.S. LEXIS 3408, 66 U.S.L.W. 3757 (US 1998); certiorari denied, 523 U.S. 1145, 118 S. Ct. 1844, 140 L. Ed. 2d 1105, 1998 U.S. LEXIS 3475, 66 U.S.L.W. 3757 (US 1998)

At [*6-7]: "The government introduced testimony from a handwriting expert that Patel's signature on the I-751 form was a forgery. In addition,...the form itself did not exist at the time it was purportedly to have been executed...."

COMMENTARY: This is a matter of anachronism that document examiners come across rarely enough to be a delightful discovery. Other anachronisms are using an ink manufactured after the date put on the document, imitating someone's handwriting from the wrong period of the person's life, asserting facts that became facts after the date of the statement. The most delightful anachronism I know of is one from a friend that I might have mentioned elsewhere in this collection. Witnesses swore they saw decedent sign the key document a month after he had died. They should have used contemporaneous exemplars and not just those written before he died.

1999

344. *Hahn and Hahn v Star Bank, et al.*, 190 Fed.3d 708, 1999 U.S. App. LEXIS 20935, 1999 FED App. 0317P (6 Cir 1999)

Plaintiffs appealed several rulings given against them by the Trial Court. At [*11]: “The Hahns presented a purported handwriting expert who stated in his affidavit that one of the signatures of Beth Wayne might be hers, but not both, although he had not examined any other examples of her signatures. Wayne’s affidavit, on the other hand, states that both signatures are hers.”

COMMENTARY: It was kind of the Court of Appeals not to name the “purported” expert who now knows never be content with only what the client gives when more is feasible.

345. *U.S. v Page*, 1999 U.S. App. LEXIS 2359 (6 Cir 1999)

In prosecution for unarmed bank robbery, “an impression of the defendant’s brother’s name and address, written in what an expert witness testified was Page’s own handwriting, was discovered on the demand note.”

COMMENTARY: Indented writing, apparently developed by electrostatic detection device (EDD), was identified as to its maker.

2000

346. *U.S. v Bentz*, 2000 U.S. App. LEXIS 27631 (6 Cir 2000)

Defendant was designated recipient of her son’s social security benefits. He was incarcerated, but defendant did not report this fact which made him unqualified for the benefits. A request for reconsideration was filed after Social Security Administration canceled his benefits because of his incarceration. At [*4-5]: “Although a handwriting examiner testified that the Request for Reconsideration was not written in Bentz’s handwriting, the form contained her address, telephone number, and what appeared to be her signature.” Her conviction for fraudulently obtaining social security benefits was affirmed.

COMMENTARY: Defendant at least had a good sense of semantics. She called Social Security to enquire why benefits had been canceled, and in reply to where her son was living she said he was out of town. When the official said he was in prison, she replied, “Well, that’s kind of like being out of town.”

347. *U.S. v Kesop and Umeokafor*, 2000 U.S. App. LEXIS 789 (6 Cir 2000)

COMMENTARY: Handwriting expert testified defendant Umeokafor’s handwriting was on packages of counterfeit currency.

348. *Wallace Hardware Co., Inc., v Abrams and Abrams*, 223 F.3d 382, 2000 U.S. App. LEXIS 18086, 2000 FED App 0250P (6 Cir 2000)

COMMENTARY: One defendant proffered the opinion of a handwriting expert that his signature on a “Guaranty Agreement” was a forgery.

2001

349. *Bout v Bolden, et al.*, 22 F.Supp. 2d 646 (E.D. Mich. 1998); affirmed, 225 F.3d 658, 2000 WL 1033043, 2000 U.S. App. LEXIS 17578 (6 Cir 2000); further appeal, 21 Fed. Appx. 327, 2001 U.S. App. LEXIS 20454 (6 Cir 2001)
22 F.Supp. 2d 646:

Included in his response to the defendants’ motion for summary judgment as to the retaliation claim were four documents purporting to be internal prison memoranda that supported the existence of a conspiracy against him. Summary judgment was granted.
2000 U.S. App. LEXIS 17578:

In a claim for retaliation a prison inmate submitted documents in evidence purportedly signed by one of the defendants who denied the signatures. Leonard Speckin was appointed by the trial court to examine the documents and concluded the signatures in question were false.

2001 U.S. App. LEXIS 20454:

Bout claimed retaliation while serving life sentence for first-degree murder. The memoranda submitted to prove the claim were shown to be forged, so the court struck the retaliation claim in its entirety and charged Bout for the \$5,469.60 in attorney and court-appointed handwriting expert fees.

COMMENTARY: All parties agreed to the appointment of the expert and no objection was raised before the trial court; therefore, objection raised for the first time upon appeal was without merit.

350. *U.S. v Cantrell*, 278 F.3d 543, 2001 U.S. App. LEXIS 27021, 2002 FED App. 0032P (6 Cir. 2001)

An FBI document examiner testified that “Cantrell may have prepared” some hand-printing, that there were characteristics in someone else’s signature that “were consistent with Cantrell’s known writing,” and that two persons’ signatures “lacked characteristics” in their known signatures.

COMMENTARY: As reported the testimony amounts to insinuation.

2002

351. *U.S. v Copeland and Hartwell*, 304 F.3d 533, 2002 U.S. App. LEXIS 18492, 2002 FED App. 0311P (6 Cir. 2002); Opinion withdrawn: *United States v Copeland*, 2003 U.S. App. LEXIS 2382 (6 Cir. 2003); opinion amended, 321 F.3d 582, 2003 U.S. App. LEXIS

3365, 2003 FED App. 0061A (6th Cir.), 61 Fed. R. Evid. Serv. (Callaghan) 231 (6 Cir. 2003); rehearing, en banc, denied by *United States v Hartwell*, 2003 U.S. App. LEXIS 8418 (6th Cir., Apr. 17, 2003); post-conviction relief denied at *Hartwell v United States*, 2005 U.S. Dist. LEXIS 38417 (E.D. Mich., Dec. 20, 2005)

COMMENTARY: Detective Michelle Dunkerley, a forensic document examiner, testified at trial that what appeared to be drug tabulations were likely made by Hartwell.

2003

352. *U.S. v Anderson, et al.*, 353 Fed.3d 490, 2003 U.S. App. LEXIS 26117, 2003 FED App. 0455P, 92 AFTR2 (RIA) 7396 (6 Cir 2003); cert. denied, *Anderson v U.S.*, 2004 U.S. LEXIS 3778 (US 2004)

Affirming conviction of 14 defendants on 73-count indictment. After being found in contempt of court, defendants gave handwriting exemplars to the grand jury. The scheme involved issuing false “sight drafts” and IRS Forms 8300, those used to report transactions of \$10,000 or more. One defendant relied on the testimony of the Government’s document examiner that he could not be identified as having signed a false document. However, he was identified as having filled it out. Another defendant relied on having been only identified as “probable preparer” of false Forms 8300.

Read the report for full description of the scheme and the mantra that would protect one against prosecution.

COMMENTARY: The mantra did not work too well.

353. *U.S. v Goist*, 59 Fed. Appx. 757, 2003 U.S. App. LEXIS 4291 (6 Cir 2003)

Bank robber gave note to teller demanding “50s, \$ 20s, and \$ 100s.” At [*3]: “Subsequently, Goist’s fingerprints were found on the note given to the bank teller. Goist also gave eighty-seven handwriting exemplars which were then analyzed by the FBI laboratory. James Taylor from the FBI testified that the demand note and handwriting exemplars given by Goist shared similar characteristics. Nonetheless, Taylor was unable to conclude affirmatively that the same person wrote the demand note and the exemplars.”

COMMENTARY: We are denied enough information so we could complain about the inadequacy of the expert work, or that of the case description, or of neither.

354. *U.S. v Mayle*, 334 F.3d 552, 2003 U.S. App. LEXIS 13263, 2003 FED App 0216P (6 Cir 2003)

COMMENTARY: Mayle murdered an SSI recipient and cashed his checks. “The government’s handwriting expert testified that the signatures on the SSI checks were not Newman’s signatures but tracings of his signature.”

355. *U.S. v Sanders and Wilson*, 59 Fed. Appx. 765; 2003 U.S. App. LEXIS 4305 (6 Cir 2003); cert denied, *Sanders v US*, 157 L.Ed.2d 95, 124 S.Ct. 140 (2003); cert. denied, *Wilson v US*, 2003 U.S. LEXIS 8588 (US Dec 1, 2003)

Objection to admissibility of testimony by handwriting expert, James Regent, was not made at trial, and so the issue was not preserved for appeal. Objection was only to Judge's describing the witness as an expert. Nevertheless, if the issue were properly appealed, Trial Judge's decision to admit the evidence was proper because the expert was highly qualified and he explained the basis for his opinion.

COMMENTARY: The expert apparently gave conclusion as to maker of the writing. It is of note that the Court of Appeals made it a point to rule the testimony properly admissible when it could have skirted the issue.

Regent authored a fine paper on handwritten disguise by slant based on an astute research protocol: 22 *Journal of Forensic Sciences*, "Changing slant. Is it the only change?" 216-21 (Jan. 1977).

2004

356. *U.S. v Demjanjuk*, 2002 US Dist LEXIS 6999 (N.D. Oh. 2002); affirmed, 367 F.3d 623, 2004 U.S. App. LEXIS 8528, 2005 FED App. 0125P, 64 Fed R Evi Serv (Callaghan) 166 (6 Cir 2004); Rehearing denied, 2004 U.S. App. LEXIS 14442 (6 Cir 2004); certiorari denied, 2005 U.S. LEXIS 7307, 160 L. Ed. 2d 341, 125 S. Ct. 429 (US 2005)

COMMENTARY: Having eventually been exonerated of false charges in Israel, Defendant is done in by document examiner testimony and application of technical rules dismissing every defense he offers.

U.S. v Demjanjuk, 128 Fed. Appx. 496, 2005 U.S. App. LEXIS 6854, reviews case history briefly, affirming all against Defendant. There are extensive case reports related to various phases of this matter, which I chose not to pursue. Personally, I think the man got a raw deal here and in Israel, much rawer here.

357. *U.S. v Ferguson*, 2004 WL 5345480 (S.D. Ohio July 30, 2004); Case No. 3:003cr019 (6 Cir. 2004)

COMMENTARY: SWGDOC lists this case as one in which handwriting identification was admitted unconditionally. I have not obtained a copy of the case report. Professor Risinger discusses it in his compilation: 51 *Tulsa Law Review*, "Appendix: Cases involving the reliability of handwriting identification expertise since the decision in *Daubert*," 477-595 (2007).

2005

358. *Tolliver; Tradco, Inc., v Federal Republic of Nigeria*, 128 Fed. Appx. 469, 2005 U.S. App. LEXIS 5827 (6 Cir. 2005)

David A. Crown testified for defendant. Examining more than 20 documents he found, among other things, that multiple names were signed by one person, that one name was signed by multiple persons, and some signatures were cut-and-paste. His testimony went un rebutted by contrary expert testimony.

COMMENTARY: The case report suggests it was a document examiner's dream case.

359. *U.S. v Hopkins*, 151 Fed. Appx. 448, 2005 U.S. App. LEXIS 22767 (6 Cir 2005)

This is almost an anonymous letter case. Threatening letters were sent to national leaders. "Helpfully, Hopkins and the others had signed their names and attached their prisoner numbers and prison addresses to the letters." When Hopkins kept it up after visits from the Secret Service, the authorities prosecuted. Hopkins was found in contempt of court when he refused to give exemplars. Based on materials from his prison files, Todd Welch, expert with Michigan police, identified him as the writer. It turned out that one prisoner was orchestrating the campaign in hopes of being prosecuted in federal court and sent to a federal prison.

COMMENTARY: You cannot blame a man for wanting to move to a nicer neighborhood.

360. *U.S. v Walls*, 134 Fed. Appx. 825, 2005 U.S. App. LEXIS 8456, 2005 FED App. 0392N (6th Cir.)

COMMENTARY: A Postal Service forensic handwriting expert testified at trial. Walls' handwriting and signature were identified on stolen money orders, and it was shown that a previous name was changed to his.

2007

361. *Nields v Bradshaw, Warden*, 482 F.3d 442, 2007 U.S. App. LEXIS 7975, 2007 FED App. 0127P (6 Cir. 2007)

Handwriting examiner determined that murder victim had handwritten pages titled "Record of Abuse."

COMMENTARY: Nields' original trial in Ohio courts with conviction and death sentence was in 1997, which gives an idea how protracted legal processes can be.

362. *U.S. v Bullock*, 243 Fed. Appx. 107, 2007 U.S. App. LEXIS 16523, 2007 FED App. 0476N (6 Cir. 2007)

COMMENTARY: Charlotte Ware, a forensic document examiner for the United States Postal Inspection Service, testified that Bullock signed two tax returns and probably signed someone else's name to one of them.

363. *U.S. v Rayborn*, 491 F.3d 513, 2007 U.S. App. LEXIS 15742, 2007 FED App. 0250P (6th Cir.). 100 A.F.T.R.2d (RIA) 5046 (6 Cir. 2007)

COMMENTARY: Charlotte Ware, a forensic document examiner for the United States Postal Inspection Service, testified that Rayborn had signed certain tax returns.

2009

364. *Barrie v Holder*, 2009 U.S. App. LEXIS 10571, 2009 FED App. 0337N (6 Cir. 2009)

The government requested a reconvened hearing because a forensic report had become available. At the reconvened hearing the Immigration judge heard testimony from a document examiner with Department of Homeland Security that Barrie had presented false documents.

COMMENTARY: In an immigration case,

2012

365. *U.S. v Heard*, No. 08-1426. (US App. 6 Cir. 2012)

Footnote 1 reads: “The government also called an FBI agent to provide a summary of the contradictory information that Heard provided to the various entities, as well as an employee of Payne-Pulliam who testified that Heard’s mother was employed at Payne-Pulliam full-time during the time she was receiving wage-loss payments. The government called a handwriting analysis expert as well.”

COMMENTARY: One of us, whoever it was, is merely mentioned as an incidental afterthought. Another case report that gives us cause for humility as to our indispensability.

2014

366. *Malin and Malin v JP Morgan Chase Bank, et al.*, No. 3:11-CV-554 (U.S. DC E.D. TN July 08, 2013); affirmed, No. 13-6023 (6 Cir. 2014); motion for attorney fees and costs granted, No. 3:11-CV-554-TAV-HBG (U.S. DC E.D. TN March 3, 2014)

The District Court’s dismissal of the Malins’ suit and disqualification of their proposed expert testimony is affirmed. “The (district) court agreed with the magistrate judge’s findings that the expert’s methodology was not based on any standard established in the field, the expert lacked any qualifications or education in document forensics or examination, and the expert’s methodology was subject to very limited testing. As the district court’s findings were not clearly erroneous, the district court did not abuse its discretion in deciding not to admit this witness as an expert on the only relevant issue, the authenticity of the mortgage documents.”

The Malins wanted to prove that the note that Chase was foreclosing on was a

digital forgery bearing a false signature.

COMMENTARY: The July 08, 2013, decision by the District Court has Footnote 5 begin: “Because the Court has affirmed the exclusion of James Kelley, Ph.D, from testifying as an expert at trial, the Court will not consider the affidavit of Dr. Kelley [Doc. 63-1] for purposes of the determination of this summary judgment motion.” The Sixth Circuit affirmed this exclusion without naming the expert. At the end Chase was granted a total of \$94,317.09 for attorney fees and costs. One would hope the house that the Malins were fighting for was worth far more than their costs in losing it.

There are several more case reports on the matter, but the three cited above cover the issue of expert reliability and admissibility. Though it treats of a technical matter and not handwriting expertise, I include it as a lesson in proper investigation of a claimed expertise and proper, thorough and fair application of the rules for admissibility. Kelley has difficulties in other cases included in this compilation which can be found through the Index of Experts or searching his name in the digital text with the “Find” function. If he is repeatedly disqualified, he does give an inspiring example of persistence.

Kelley’s declaration in this case for the Malins might be that posted at:
http://bpinvestigativeagency.com/wp-content/uploads/2013/01/Declaration-of-Dr-James-Kelley-Malin-v-JPMorgan-Chase-Bank-USDC-Tennessee01222013_00003.pdf.

2015

367. *U.S. v Harris*, No. 14-1288 (6 Cir. 2015)

COMMENTARY: This is a case of threatening letters to a congresswoman sent using another person’s return address. Three lay witnesses testified that the handwriting was Defendant’s. Though no expert was involved, I include it as one of the better examples of explanation of the rules governing a lay witness to handwriting and how courts assess whether the rules for admissibility are satisfied. Defendant had had practice using the Postal Service for mischief which gave a mail carrier practice in recognizing the writing on the threatening letters.

2016

368. *U.S. v Harris*, No. 14-3880 (6 Cir. 2016)

Handwritings experts for both Government and defense testified. The trial court’s rulings were upheld, such as an FBI agent who was not a handwriting expert and so could not be asked his opinion on authenticity of signatures. This is a different defendant than in the previous 2015 case.

COMMENTARY: The agent “had testified that he had read but not entirely understood the report of the FBI handwriting expert.” That did not seem to have been pursued as possibly raising a reasonable doubt in at least one juror’s mind. Forcing the prosecution to explain how the report made perfectly good sense would perforce entail

why the agent lacked mental acumen, thus putting the prosecution on the defensive. In jury argument defense attorney could champion the agent's intelligence and integrity and explain how the report was simply lacking in both correctness and clarity.

7. Seventh Circuit.

1994

369. *U.S. v Chernoff, et al.*, 1994 U.S. App LEXIS 8399 (7 Cir 1994)

"Defendants...raise a multiplicity of issues, all of which lack merit." One issue was the handwriting expert testimony. Two arguments against the testimony are given. First, the witness did not know the source of the questioned documents he examined, and so his reliance on them was not reasonable, to which the Court replies: "There is no reason that the handwriting expert needed to know the source of the documents in order to determine whether they matched the exemplars." Second, the questioned documents and exemplars were supplied by the Government of which he was an employee. However, with ample opportunity on cross-examination the defendant did not bring out any basis for exclusion of the expert testimony.

COMMENTARY: The two contentions against the expert testimony are of the same speculative "reasons" made up out of thin air as the anti-expert experts come up with. However, the latter are more clever in their inventions and so require that their victims be more astute in ferreting out the speculation and negating it.

1996

370. *U.S. v Whitaker*, 1996 U.S. App. LEXIS 24197 (7 Cir 1996)

Defendant was convicted of mailing a threatening communication and threatening the President. The appeal was found to be entirely frivolous, the reasons being discussed at length. A handwriting expert testified the letter of threat was in defendant's handwriting.

COMMENTARY: A case of routine admissibility.

371. *Vest v Commission of Internal Revenue*, 1996 U.S. App. LEXIS 15424, 96-2 U.S. Tax Cas. (CCH) P50,573, 78 A.F.T.R. 2d (RIA) 5560 (7 Cir 1996)

COMMENTARY: A handwriting expert testified in tax court.

1997

372. *U.S. v Harvey*, 117 F.3d 1044, 1997 U.S. App. LEXIS 16101, 47 Fed. R. Evid. Serv. (Callaghan) 492 (7 Cir 1997)

Harvey was convicted of growing marijuana. Notebooks found in his camp were

authenticated in two ways by the government. First, only the grower would have written them, but that assumes Harvey was the grower, and “this is circular reasoning at its worst.” Secondly, the contents were such as known only by Harvey, and that properly authenticated them.

However, prior to this discussion, the Court states at pages [*12-13]: “The authentication issue here is whether Harvey really authored the written materials found at the campsite. For some unknown reason, the Government did not attempt to authenticate the written materials using handwriting analysis. Rule 901(b) specifically contemplates the use of handwriting comparisons to authenticate written materials, and such a comparison would have been the preferred method here. Rule 901, however, does not mandate handwriting comparisons, and the Government suggests that the notes and diaries were properly authenticated by other means.”

COMMENTARY: Although there was no expert handwriting testimony, the case is supportive of both its admissibility and preference over alternative means.

373. *U.S. v Washington*, 109 F.3d 335, 1997 U.S. App. LEXIS 5002 (7 Cir 1997)

COMMENTARY: In a three-strike conviction, a handwriting expert identified defendant as writer of demand notes in bank robberies.

1998

374. *U.S. v DeBerry*, 1998 U.S. App. LEXIS 9354 (7 Cir 1998)

COMMENTARY: A fingerprint expert testified defendant’s prints were on a bank robbery note, and a handwriting expert testified it was in his handwriting.

375. *U.S. v Hajda*, 963 F.Supp.1452 (N.D. Ill. 1997); affirmed, 135 F.3d 439, 1998 U.S. App. LEXIS 1048, 48 Fed. R. Evid. Serv. (Callaghan) 859 (7 Cir 1998)

COMMENTARY: District Court found defendant to have been a Nazi prison guard, at page [*12-13], “based largely on the government’s ‘overwhelming’ documentary evidence.” Previously defendant’s sister had given statements that he had been a Nazi guard. At page [*18]: “Kazimiera’s trial testimony is similarly incredible. Her denial that her statements bore her signature was contradicted by a handwriting expert.”

2000

376. *Oto v Metropolitan Life Insurance Co; Metropolitan Life Insurance Co. v Beverley*, 224 F.3d 601, 2000 U.S. App. LEXIS 19799, 55 Fed. R. Evid. Serv. (Callaghan) 220 (7 Cir 2000); rehearing denied, 2000 U.S. App. LEXIS 23701; certiorari denied, 2001 U.S. LEXIS 1229 (US 2001)

Beverley was Oto’s father-in-law who claimed Oto’s wife signed benefits over to

him before her death. While this case was proceeding in Federal District Court, a Cook County court ruled that the wife's signature on a deed in favor of her father was a forgery. The Federal District Court granted Oto summary judgment which was upheld on appeal. The transcript of the handwriting expert's deposition had one sentence at odds with her other testimony and her report, namely that the writer of 12 exemplars had written the signature on the change of beneficiary at issue. She corrected that on an *errata* sheet. The District Court and the Court of Appeals both rejected Beverley's argument, asserting on the contrary that the one sentence, either a typographical error or misstatement, "was not enough to create a genuine issue of material fact."

COMMENTARY: Though this case did not involve trial testimony, I include it as an object lesson for all of us. An expert must be careful in stating an opinion lest it be misstated, but more importantly an expert must review a transcript of deposition in detail to correct the slightest error.

377. *U.S. v Brumley*, 2000 U.S. App. LEXIS 15993, 217 F.3d 905, 54 Fed R Serv 3d (Callaghan) 1454 (7 Cir 2000)

Having admitted the signature on a *Miranda* waiver "appeared to be a copy of his signature," after his conviction defendant asked the Trial Court to permit a handwriting expert to examine the waiver, which the Court allowed. The expert said the signature was defendant's but that there was evidence of alterations and ink touch-ups along with undeciphered indented writing. Motion for further testing and new trial on basis of newly discovered evidence was denied, and the conviction was affirmed upon appeal. Defendant did not explain on appeal why the document had not been examined before trial.

COMMENTARY: Though there is no mention of challenge to reliability of the expert's work and findings, by such omission the reliability seems to have been taken for granted by everyone. In any case, this can be cited as another instance of acceptability of the expertise in post-*Daubert* litigation. Note that, here as elsewhere, upon appeal the incompetence of defense trial counsel in not doing a thorough investigation and trial preparation is credited to defendant personally, as is appeal counsel's failure to cover all issues needed to support the appeal.

2001

378. *Angelini v Cowan*, 18 Fed. Appx. 387, 2001 U.S. App. LEXIS 19101 (7 Cir 2001)

Having been convicted of sexual assault in Illinois state court and having exhausted all his appeals, defendant brought *habeas corpus* in Federal district court which denied him relief. The Seventh Circuit affirmed in part, vacated in part, and remanded for further proceedings.

Defendant had been identified by the victim by voice. Part of the investigation is described on page [*3]: "Police investigators learned that nearly four months earlier the victim's apartment had been burglarized while she was sleeping. The victim had reported

the burglary to the police, and days later told police that she had received harassing phone calls from an anonymous caller with a deep, gravelly voice. The caller told her that he had her purse and pairs of her panties. The victim found her panties on the antennas of cars at her place of employment a few days later. The victim's name and telephone number were handwritten on the panties. The police still had the panties in its possession and arranged for a handwriting expert to compare the writing on the panties with samples of Angelini's handwriting obtained in connection with his 1982 conviction. The expert's comparison was inconclusive, but after obtaining more recent samples, he concluded that it was Angelini's handwriting on the panties."

The handwriting expert was called at trial, and the appeal record does not indicate any challenge to his evidence.

COMMENTARY: It is not quite a case of routine admissibility, since the questioned writing was on a most unusual surface. Without knowing whether the "more recent samples" were also on panties or cloth similar to the panties in question, one cannot offer an evaluation of the scientific reliability of the evidence. Certainly this is a case where a good defense trial attorney would offer some challenge, and a good appeal attorney would make the permitting of such testimony a point of error at trial.

379. *Malachinski v Commissioner of Internal Revenue*, 77 T.C.M. 2092, T.C. Memo. 1999-182 (US Tax Ct. 1999); affirmed, 268 F.3d 497; 2001 U.S. App. LEXIS 21453; 2001-2 Tax Cas (CCH) P50, 695 (7 Cir 2001)
77 T.C.M. 2092:

This reports the facts and ruling addressed in the appeal that is discussed below. It is stated that Davidson is member of ASQDE and certified by ABFDE.
268 F.3d 497:

At page 501: Malachinski's expert, Diane Marsh, "a board-certified forensic document examiner," failed to include in her report "the facts, data, and analysis that form the basis for an expert's conclusion," and so she was properly not permitted to testify to them. Tax Court Rule 143(f). James Davidson, expert for IRS and also board-certified, said there were not enough exemplars to determine whether the signature in question was genuine. At page 502: "[The Court] accordingly sustained the IRS' objection and restricted Marsh's direct testimony to the material set forth in her written report." Reason for rule is so that the opposing party could have fair opportunity to prepare for cross-examination and rebuttal. Considering both experts' testimony, circumstantial evidence and its own examination of the signatures, the Trial Court found the signature in question to be genuine.

COMMENTARY: An expert must be assiduous in finding out the requirements of the rules for expert note-taking, reports, testimony and other aspects of the work. One cannot rely on the attorney/client to provide all such information. The discounting of the expert's opinion for some neglected technicality can come back to haunt the expert, not the attorney/client. See the 2003 Federal *Deputy* case discussed below where the

Malachinski case came back to haunt Marsh.

380. *U.S. v Havvard*, 117 F. Supp. 2d 848, 260 F.3d 597, 2001 U.S. App. LEXIS 15991, 56 Fed. R. Evid. Serv. (Callaghan) 900 (7 Cir 2001)

COMMENTARY: This case shows how the same fallacy applied to different disciplines is still fallacious. Defendant cited the *Starzecpyzel* and *Santillan* cases to show fingerprint expert evidence is inadmissible as is handwriting. It did not work out.

The name is also spelled “Haward.”

381. *U.S. v Spiller*, 261 F.3d 683, 2001 U.S. App. LEXIS 18533, 57 Fed. R. Evid. Serv. (Callaghan) 1343 (7 Cir 2001)

In prosecution for cocaine offenses, defense attorney would not stipulate to ledgers found at the site, so at page [*4]: “The government then used two expert witnesses to explain the ledgers. The first witness, William Storer, a handwriting expert, testified that the ledgers contained similar handwriting to Spiller’s writing samples. Spiller’s attorney did not object to Storer’s testimony.” The second witness interpreted the contents of the ledgers, in what was partly stylistics or linguistics evidence.

COMMENTARY: Every handwriting contains at least some vague similarity to any other, or they could not both be recognized as handwriting. But did these experts expertly explain why the similarities were significant and individualistic?

2002

382. *U.S. v Westmoreland*, 340 F.3d 618, 2001 U.S. App. LEXIS 2295 (7 Cir Ill. 2001); 312 F.3d 302, 2002 U.S. App. LEXIS 24455, 59 Fed. R. Evid. Serv. 3d (Callaghan) 1186 (7 Cir 2002); cert. denied, 155 L.Ed.2d 1077, 123 S.Ct. 2094, 2003 U.S. LEXIS 3844 (U.S. 2003)

In harmless error, a letter was admitted at trial. Footnote 5 states: “Moreover, expert testimony on the issue of the letter’s authenticity appears to have been collateral to Bronnie Matthews’ testimony that she was not the letter’s author. Allowing a handwriting expert to corroborate her testimony was impermissible under Rule 608(b). Rule 608(b) provides that ‘specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility...may not be proved by extrinsic evidence.’ *Id.*”

COMMENTARY: Just because expert testimony is found by a trial court to be inadmissible or its admission is found by a court of appeal to have been error is not necessarily related to its reliability. We must ascertain the rule behind the finding before drawing conclusions. Additionally, we must guard against accepting the opinion of others who unwittingly interpret every ruling of inadmissibility as a stain on the expert witness or on the discipline.

383. *Deputy v Lehman Brothers, Inc.*, D.C., Eastern District of Wisconsin, No. 02 C 718; reversed and remanded, Court of Appeals, Seventh Circuit, Nos. 02-4305 & 03-1155 (2003); 345 F.3d 494; 2003 U.S. App. LEXIS 19952; 62 Fed. R. Evid. Serv. (Callaghan) 965 (7 Cir 2003)

There is extensive review of what happened in the District Court. In a hearing on a motion to dismiss, Lehman Brothers called Diane Marsh who was member of WADE, IAQDE and ABFE. Responding “no” to trial judge’s question as to whether a court had refused to accept her as an expert witness, the judge then asked about *Malachinski v Commissioner of Internal Revenue*, 268 F.3d 497; 2001 U.S. App. LEXIS 21453; 2001-2 Tax Cas (CCH) P50, 695 (7 Cir 2001), which was discussed previously. Eventually the judge said she lacked candor since that court had rejected her expert report.

In *Deputy* she had first seen copies and gave a qualified opinion, then saw originals and gave an unqualified opinion, describing what observations she had made. She said “yes” when the judge asked if her work was a science. Asked by the judge to give principles she relied on, she was less than clear and precise, except when saying at pages 11-12 “that there are no particular number of points of comparison [to make an identification]. Rather, as an expert, Marsh explained, she must determine if there is a fundamental difference because ‘in order to determine that two signatures were not written by the same individual you only need one fundamental difference.’”

The trial judge rejected the testimony because she failed to say a previous court had rejected her, and he ruled that her testimony was not admissible; then he proceeded to render summary judgment. In the written opinion, the judge gave seven reasons for rejecting Marsh. The Court of Appeal rejects all seven since in that hearing the trial judge was only to rule on admissibility but instead ruled on credibility and made a finding of fact.

At page 20: “At the hearing, however, Marsh explained that the inconsistency was merely a typographical error.... A typographical error appearing in an expert report might lead a fact-finder to conclude that the expert is sloppy, but it does not render an expert’s opinion unreliable and thus inadmissible.” The trial judge had mischaracterized several points about Marsh’s testimony, such as saying she had not asked to see originals. The District Court also asked the wrong questions. For example, when the District Court found problems with her change of opinion after seeing a second exemplar signature, the Court of Appeals said that had to do with credibility and concluded: “Thus, the district court’s inquiry should have been on whether professionals in the field of handwriting analysis agree that the addition of a second sample allows for a conclusion as to the validity of the signature at issue. The only testimony before the district court was Marsh’s....”

The Seventh Circuit had issued the *Malachinski* opinion, and so its *Deputy* opinion takes issue with the District Court’s misreading of that former opinion. Marsh had not

been rejected as an expert witness, but her testimony had been restricted to what was in her report. At page 24: “By incorrectly focusing on *Malachinski* and other issues relating to credibility, the district court did not properly assess whether handwriting analysis in general, or Marsh’s expert opinion in particular, is admissible under Rule 702. Therefore, we must reverse....” The District Court was to hold a proper hearing on admissibility.

COMMENTARY: Without a ruling on Marsh’s reliability, this case report is an object lesson in how best experts can prepare for a Daubert hearing. One is best advised to review one’s report for mistakes, to have clear explanations ready for all aspects of one’s work, including theory, method and equipment, and to master the professional references which support one’s work. In many cases reviewed herein, handwriting experts can neither explain clearly what they are doing and why nor set forth the published texts supporting it all. If Lehman Brothers had not had the wherewithal to appeal the District Court’s incorrect findings and rulings, Marsh would have had a flawed ruling stand as the final word on her reliability and credibility. And that prospect is a strong motivation for an expert to do exemplary work on every case.

384. *Learning Curve Toys, L.P., v PlayWood Toys, Inc.*, 2000 US Dist LEXIS 5135 (N.D. IL 2000); 2002 US Dist LEXIS 4295; *Learning Curve Toys, Inc., v PlayWood Toys, Inc.*, 2003 U.S. App. LEXIS 16847; 342 F.3d 714; 67 USPQ 2d (BNA) 1801 (7 Cir 2003)

DISTRICT COURT 2000:

District Court denied PlayWood’s motion to reconsider suppression of testimony by Albert H. Lyter, III, that ink testing showed one portion of a document was written at least six months after the rest of the document. There had been no scientific support for Lyter’s relative age analysis through comparative percentage extraction. Older inks were said to extract slower and less than newer inks, but the literature showed that at times the process was reversed. The Court said that PlayWood’s attempts to make up for prior deficiency only gave further support to the Court’s ruling.

SEVENTH CIRCUIT:

Several issues are considered, resulting in remand for PlayWood. Jury’s finding in its favor to be restored and hearing held on exemplary damages and attorney’s fees. However, in note 10 the Court of Appeals declined to consider suppression of Lyter’s testimony because PlayWood failed to include the transcript for the suppression hearing and did not cure the omission though it had ample opportunity.

COMMENTARY: The District Court’s decision on ink analysis is instructive on how to challenge such evidence and on what one must do to support its reliability. There was no consideration of expertise in handwriting, but the case came up as one having to do with *Daubert* standards not being met by handwriting analysis. Again, this cautions us not to take analyses of what cases say on blind faith but to check them out ourselves. I trust my readers will verify both my summaries and my commentaries against the original texts of these cases before relying on them as authority for a specific issue. I do not recommend your relying on my views alone.

2005

385. *Durkin and Reed v Equifax Check Services, Inc.*, 2004 U.S. Dist. LEXIS 5373 (N.D. Ill., Mar. 31, 2004); affirmed, 406 F.3d 410, 2005 U.S. App. LEXIS 6716, 67 Fed. R. Evid. Serv. (Callaghan) 8 (7 Cir. 2005); rehearing denied, 2005 U.S. App. LEXIS 13474 (7 Cir. 2005)

Plaintiffs offered linguist and English professor Dr. Allan Metcalf to prove specific passages of collection letters were confusing. First summary judgment was denied because Metcalf was to testify. Then a *Daubert* challenge prevailed and Metcalf was ruled unreliable. Subsequently, summary judgment was granted since plaintiffs only had their own testimony that the letters confused them. Reasons for Metcalf's being found unreliable included that he focused on entire letters rather than the specific passages plaintiffs challenged and that he did not explain how he arrived at his opinion.

"The district court disagreed [with motion for summary judgment] but ruled that the case should go to trial since the plaintiffs procured a linguistics expert, English professor Allan Metcalf, to support their [*7] claims of confusion. However, Equifax later filed a motion to bar Metcalf from testifying at trial, which the district court granted. Consequently, the plaintiffs were left with no evidence of confusion beyond the collection letters themselves and their...own assertions that the letters were confusing. This development led Equifax to move for summary judgment... The district court granted the motion, ruling that the plaintiffs could not proceed to trial relying solely on the letters and their own self-serving testimony."

The District Court found Metcalf's testimony both irrelevant and unreliable, which was affirmed on appeal. "Accordingly, the district court did not abuse its discretion by excluding Metcalf's untestable say-so."

COMMENTARY: Linguistic analysis now enjoys sound research backing and reliable methodologies, though there are still some rather marginal individuals claiming to be experts.

386. *Pasha v Gonzales*, 433 F.3d 530, 2005 U.S. App. LEXIS 28899, 69 Fed. R. Evid. Serv. (Callaghan) 98 (7 Cir. 2005)

In an immigration case, Gideon Epstein examined four out of nine documents Pasha presented and said they "were probably fakes." He based this on his belief that the Albanian government would not use color laser print technology and on the fact that the Albanian printed text lacked diacritical marks. However, Epstein admittedly had no knowledge of Albanian and how it should be written and had no access to genuine comparable documents. The Court of Appeals stated: "The principal ground of the appeal relates to the infirmities in document expert Epstein's evidence. He should not have been permitted to testify."

Strictly speaking, the *Daubert* criteria do not apply to administrative hearings, such as Immigration Court. Nevertheless, junk science ought not be admitted.

COMMENTARY: All the theoretical principles on which Epstein relied were nothing more than unfounded and unverified speculation. So often, when expert witnesses engage in speculations based on their own lack of objective knowledge, attorneys and judges assume the expert knows, whereas the expert is only making assumptions, albeit most self-assuredly. It is this kind of empty rumination that gives excuse for critics to say all of us are doing the same thing. Epstein holds, or once held, certification from ABFDE.

387. *U.S. v Della Rose*, 403 F.3d 891, 2005 U.S. App. LEXIS 5696, 66 Fed. R. Evid. Serv. (Callaghan) 1170 (7 Cir. 2005)

Della Rose, an attorney, was accused of taking a client's funds. A document examiner testified that the alleged signature of the client on various documents was not his natural writing. The signatures, however, were consistent among themselves. The inference was that Della Rose had someone else write the signatures for a share of the take. The court concluded that another individual signed all the false signatures; that individual made a deal with the Government in exchange for testimony against Rose.

COMMENTARY: That the signatures were not the client's "natural signatures" is a terminology most often used to indicate the person had signed but had changed his manner of writing. In fact, every signature anyone but you has signed since the very first signature ever to be written is not your "natural signature," as well as any of your very own that you messed up for any reason. Thus an impressively sounding phrase is rather meaningless by meaning far too much and saying far too little. However, such terminological slovenliness is a good way to make a living in many professions.

388. *U.S. v Seals and Johnson*, 419 F.3d 600, 2005 U.S. App. LEXIS 17225, 67 Fed. R. Evid. Serv. (Callaghan) 1290 (7 Cir. 2005); certiorari denied, *Seals v U.S.*, 126 S. Ct. 770, 163 L. Ed. 2d 597, 2005 U.S. LEXIS 8813 (U.S. 2005); appeal after remand at *U.S. v Seals*, 2006 U.S. App. LEXIS 5305 (7 Cir. 2006)

COMMENTARY: In a case of routine admissibility, a handwriting expert testified that Johnson wrote incriminating notes given to a man named Taylor who assisted in the bank robbery.

2006

389. *Hanaj v Gonzales*, 446 F.3d 694, 2006 U.S. App. LEXIS 10943 (7 Cir. 2006)

In an immigration case, "Gideon Epstein, an expert document examiner from the federal government's Forensic Document Laboratory, examined the documents submitted by Hanaj. After comparing Hanaj's birth [*10] certificate to four authentic birth certificates in FDL's files, Epstein concluded that the birth certificate was a fabricated document. Epstein also concluded that the international driver's license was a very poor quality counterfeit. The FDL files did not contain documents similar to the arrest warrant and the LDK membership card, so Epstein reached no conclusion as to the validity of

those documents.”

The Seventh Circuit held that the Immigration Judge [IJ] put too much faith in Mr. Epstein’s testimony: “The IJ cannot selectively examine evidence in determining credibility, but must present a reasoned analysis of the evidence as a whole. Instead, the IJ in this [*19] case used the allegedly forged nature of the documents to negate the credibility of the claim as a whole, and to negate the relevance of all other corroborating evidence presented.”

At *9: “Kelly Lynn Maynard, a linguist, testified as to an analysis of Hanaj’s speech, concluding that it was consistent with the speech of persons in Southeastern Kosovo, specifically Gjilan. The government did not contest her qualifications as an expert or the admissibility of her testimony, but cross-examined as to her conclusions.”

COMMENTARY: For a rather disparaging evaluation of Mr. Epstein’s testimony by the same Court of Appeals, see supra *Pasha v Gonzales*, 433 F.3d 530, 2005 U.S. App. LEXIS 28899, 69 Fed. R. Evid. Serv. (Callaghan) 98 (7 Cir. 2005). At least he learned to compare the suspicious to what he believed were genuine samples of the same form.

I have had INS, now Homeland Security, cases where government experts were so expert that they needed no exemplars. They relied on their own gratuitous speculations, apparently commonly held by many of them, as to how foreign governments, however impoverished, must use sophisticated methods to prepare documents. A long time after they are issued, these documents must past muster with American experts who might have no knowledge how the genuine was produced or what it looks like.

2008

390. *U.S. v Magers*, 535 F.3d 608, 2008 U.S. App. LEXIS 15722 (7 Cir. 2008); post-conviction relief denied, *Magers v U.S.*, 2009 U.S. Dist. LEXIS 38973 (N.D. Ind., May 6, 2009)

“The government also called a forensic [*3] document examiner who told the jury that the letter to the President was ‘probably’ sent by Magers. Similarly, a handwriting expert testified that he possessed the ‘highest level of confidence’ that the letter to the Chief Justice was sent by Magers.” The letters also contained an innocuous powder that recipients could reasonably take to be threatening.

COMMENTARY: Part of the evidence tying the letters to Magers was that the same preprinted forms and papers were found in his prison cell and the envelopes had the prison’s name on them.

391. *U.S. v Owens*, conviction remanded, 424 F.3d 649 (7th Cir. 2005); conviction affirmed, sentence remanded, 298 Fed. Appx. 505, 2008 U.S. App. LEXIS 22942 (7 Cir. 2008)

COMMENTARY: In a case of routine admissibility, a document examiner identified Owens as writer of a holdup note that his cousin used to rob a bank while

Owens waited in the getaway car.

2009

392. *U.S. v Ozuna*, 561 F.3d 728 2009 U.S. App. LEXIS 7034 (7 Cir. 2009)

Drugs were found in a search of Ozuna's truck. "The district court initially suppressed the evidence from the search because the government had failed to prove by a preponderance of the evidence that Ozuna consented to the search."

Upon the Government's motion to reopen the suppression hearing and receive expert handwriting evidence, the defense argued, among other things, that it would be prejudicial to do so without a handwriting examiner for the defense. At the reopened hearing, defense expert, Ellen Schuetzner, explained that the problems she saw in Ozuna's purported signature on the consent form could be from a poor pen or because the document had been bathed in a chemical for fingerprints before she examined it.

James Regent for the prosecution testified to the "highest degree of confidence" that Ozuna had signed the consent form. "He explained that the writing appeared natural, that he did not find evidence of simulation, and that all dissimilarities between the questioned and known signatures were within the expected range of variation."

The court explained that it gave little credence to Regent's conclusion but said it found both experts' testimony helpful in conducting its own examination of the signature, after which it concluded by a preponderance of the evidence that Ozuna had signed the document.

COMMENTARY: Presumably Regent examined the document before it was bathed with the chemical, otherwise his opinion would have been the same as Schuetzner's. As to "the expected range of variation," the defense attorney should have asked for the reasonable bases of the expectation and whether it could be demonstrated from Ozuna's genuine signatures. Regent co-authored one paper and authored another, both excellent, in *Journal of Forensic Sciences*, January 1977.

2012

393. *May v Chrysler Group*, 692 F.3d 734 (US App. 7 Cir 2012)

Graffiti appeared on May's tool box and other surfaces in his work area that were racial, sexual, and physically threatening. Chrysler's lawyers retained Jack Calvert, a forensic document examiner. No perpetrator was ever identified. May won his suit which was mostly upheld on appeal.

COMMENTARY: Calvert's qualifications were not challenged, but his opinion was:

"Calvert's testimony was challenged, of course. The jury heard that Calvert's list of possible authors was reduced not just by his own professional opinion but also by Chrysler informing him that twenty-six employees could be removed from consideration

because they were not at the plant at the time of one of the incidents. The jury heard that those removed included Eldon Kline, John Myers, and Dave Kuborn. The jury also heard testimony that May was not eliminated as a possible perpetrator even though he, too, was not present when some of the incidents occurred. Chrysler never gave that information about May to Calvert. Chrysler did, however, give Calvert a large number of samples of May's writing, including May's notes documenting the harassment where, according to May's testimony, he tried to copy graffiti exactly as printed."

As so often happens, Chrysler impeached its own expert by eliminating some suspects because they were absent at the time while not doing so for May though he had been absent during some occurrences. Chrysler supplied a generous amount of comparison materials to Calvert written by a number of employees but apparently far more for their favored culprit, May, than for other possible writers.

This case provides an occasion for information the reader might find useful. Approximately 20% of anonymous writing of this nature is made by the alleged victim or the one discovering it. The report tells of a psychiatrist retained by Chrysler who stated May had personality problems. An employer is put in quite a difficult position in these situations, so consider the following steps to mitigate your potential liability and maximize chances of identifying the culprit.

Take the first instance seriously while playing it as low key as possible. In the May case the jury was persuaded Chrysler did not act soon enough nor effectively enough. This is a point where perception of non-performance seems to be more persuasive than performance. So maximize both performance and its persuasive appearance.

Second, there are special rules for identifying graffiti, and there have been case reports where it was ruled unreliable because the expert apparently failed to explain the reliable method and the published research supporting it.

Third, make the victim a prime suspect while treating the victim with the utmost diplomacy and empathy. Include every reasonable suspect in the investigation, including yourself if warranted. Often in such cases the favorite suspect is more often than not innocent, while at times the most innocent and unsuspected is the culprit. Anonymously written attacks are a coward's way to attack, and a coward is a social chameleon whose survival depends on a shifting deception regarding one's true character.

Fourth, if the perpetrator is identified, channel the individual into professional counseling if that is within your authority. Otherwise, suggest it to whoever has such authority. There have been psychological studies of writers of anonymous messages of threat and/or insult, and there is a common pattern rooted in a psychological disturbance needing professional counseling. Do not attempt playing the professional roles of handwriting expert, attorney or counselor unless you have the proper qualifications as well as license if required. Examination of graffiti requires more knowledge and skill than examination of other writings. Lack of same might well explain how some document examiners have been rightly discounted by judges in some cases, while other examiners were well received.

I am compelled to add a further note of caution. There is an old proverb: One robin does not a spring make. No single, unsubstantiated clue is reliable evidence, much less proof, as to a perpetrator. The finest handwriting experts will tell you that far too many clients are very sure of what the expert's opinion should be because of some isolated feature, or a few superficial traits. No matter how correct events later prove your initial opinion to have been, let the experts tell you when there is sufficient evidence to voice even the smallest accusation. This is related to the necessity of being wary of an expert who readily agrees with all your opinions. As you include all reasonable suspects in your investigation, giving all equal treatment and equal courtesy, let it be known this is primarily to protect the innocent from false accusation.

394. *Woolley v Rednour*, No. 10-3550. (US Ct. App. 7 Cir. 2012)

Woolley was convicted of double murder and other felonies in Illinois court. Having been denied *habeas corpus* relief in Federal court, he was granted leave to file in Federal court on basis of ineffective counsel. Counsel was ineffective but it was harmless error. The handwriting expert was called to authenticate defendant's signatures on two handwritten confessions obtained by a cellmate, Tomsha:

"At trial, the prosecution produced an FBI handwriting expert who confirmed that the signatures on the documents matched Martin's and did not belong to Tomsha. The expert could not establish that the information contained inside the documents matched Martin's handwriting. But the expert explained that Martin refused to provide a natural handwriting exemplar to permit an adequate comparison."

Footnote 7 reads: "The expert could not definitively conclude whether Martin authored the body of the documents. But even this fact does little to help Martin under the circumstances. The expert testified that Martin intentionally refused to provide a natural handwriting exemplar. A jury could reasonably infer from this testimony alone that Martin sought to defeat the expert's handwriting identification because he knew it would inculcate him. Again, Martin has proposed no defense on this point."

COMMENTARY: It seems that the prosecution for once did not reward the jailmate's testimony with leniency in his own case since it was completed and he had just about served out his sentence. At least the reports seems to me to hint of this.

8. Eighth Circuit.

1995

395. *U.S. v Brown*, 66 F.3d 124 (8 Cir 1995); 156 F.3d 813, 1998 U.S. App. LEXIS 21896; rehearing denied, 1998 U.S. App. LEXIS 26893 (8 Cir 1998)

In the report at 66 F.3d 124, headnote 13 reads: "Prosecutor's observation during closing argument that defense had not called handwriting expert was appropriate rebuttal to defense's reference to prosecution's failure to call such witness."

At 156 F.3d 813, page 815: “Brown was ordered to furnish a handwriting sample so that it could be compared to certain incriminating documents which allegedly were in his handwriting. He refused.... Brown’s refusal to give an exemplar was not privileged, and the jury could properly consider his refusal as evidence that the results of that testing would have been adverse.”

COMMENTARY: By inference, the Eighth Circuit confirms the propriety of presenting handwriting evidence. This is another post-*Daubert* case which gives no thought to the legal theory manufactured by the anti-expert experts. One could also reasonably argue that, if the Court had not considered handwriting comparison reliable, it would have been abuse of discretion to affirm the long-standing rules on compelling exemplars from a suspect and of arguing regarding a refusal to provide them. There are a great number of cases addressing this rule; citing them all would lengthen this text by 10-20%.

1996

396. *U.S. v Gonzales*, and related cases, 90 F.3d 1363, 1996 U.S. App. LEXIS 18433, 45 Fed. R. Evid. Serv. (Callaghan) 226 (8 Cir 1996)

Various convictions relating to illegal drugs and money laundering were affirmed. A search warrant turned up notebooks “consistent with drug notes” and Western Union cash receipts. At [*5]: “Further, Debra Springer, a handwriting expert who analyzed the writing on the MTAs [money transfer applications], testified as to how many documents were produced by each individual.” Gonzales contended that the admission of this testimony was error. In footnote 5, the Court of Appeals states that the admission of this evidence was not abuse of discretion. The MTAs were admissible because of the foundation the government had established, and the portions filled out by the defendants were not hearsay but an admission by a party-opponent. At [*22]: “A handwriting expert connected the defendants to a number of these transactions.”

COMMENTARY: Not only was the handwriting expert properly admitted, but she was a key to some of the convictions, being the one to connect the defendants to the criminal acts of money laundering. By inference, the jury would have found her evidence to be proof beyond a reasonable doubt.

397. *U.S. v McKinney*, 88 F.3d 551, 1996 U.S. App. LEXIS 15683; rehearing denied, 1996 U.S. App. LEXIS 15683 (8 Cir 1996)

Defendant was convicted of threatening a member of Congress. He acknowledged to investigators having written several objectionable letters but denied having written an anonymous threat letter. “At trial, Mr. McKinney’s admission regarding the signed letters was admitted. In addition, an expert testified that the handwriting in the signed letters matched the writing in the unsigned letter and its envelope. Another expert testified that Mr. McKinney’s palm print was on the unsigned letter, and that someone else’s

fingerprints [*4] were on its envelope.”

COMMENTARY: A case of routine admissibility.

398. *Willis v U.S.*, 87 F.3d 1004, 1996 U.S. App. LEXIS 15680 (8 Cir 1996)

Handwriting expert identified Willis as maker of false entries on a loan application.

COMMENTARY: A case of routine admissibility.

1997

399. *U.S. v Logan*, 121 F.3d 1172, 1997 U.S. App. LEXIS 20842, 47 Fed. R. Evid. Serv. (Callaghan) 806 (8 Cir 1997)

In a trial for various drug offenses, an examiner of documents testified that Logan probably wrote money wire transfers, “based on [a] reasonable degree of scientific certainty in the field of handwriting analysis.”

COMMENTARY: It is a case of routine admissibility with the added twist that the handwriting expert witness was permitted to assert scientific certainty.

1998

400. *U.S. v Battles*, 156 F.3d 852, 1998 U.S. App. LEXIS 23251 (8 Cir 1998)

Conviction on six counts of access device fraud was affirmed. “At Battles’s trial, his former wife, a handwriting expert, and credit card company employees testified that Battles obtained two credit cards in his former wife’s name without her knowledge, and after their divorce accrued charges acceding \$1,000 on each credit [*3] card in a period of less than one year.”

COMMENTARY: A case of routine admissibility.

401. *U.S. v Stuart*, 150 F.3d 935, 1998 U.S. App. LEXIS 17476 (8 Cir 1998)

In prosecution for making false statements to a firearms dealer, “Expert testimony established that the handwriting on Form No. 4473 was appellant’s handwriting....”

COMMENTARY: This is a case of routine admissibility.

1999

402. *Ervin v Delo and Bowerson*, 194 F.3d 908, 1999 U.S. App. LEXIS 25700 (8 Cir 1999)

At trial, “handwriting experts testified Richard had probably written” a note found in the murder victims’ home.

COMMENTARY: A case of routine admissibility.

403. *U.S. v Lawson*, 173 F.3d 666, 1999 U.S. App. LEXIS 6387 (8 Cir 1999); certiorari denied, 528 U.S. 909, 145 L. Ed. 2d 215, 120 S. Ct. 256 (1999); in *Lawson v U.S.* motion to vacate sentence denied and conviction affirmed, 22 Fed. Appx. 686, 2001 U.S. App. LEXIS 26276 (8 Cir 2001)

Affirming conviction of being a felon in possession of firearms. A handwriting expert testified that Lawson's known signatures matched those on various documents relating to pawning and redeeming from pawn various firearms.

COMMENTARY: A case of routine admissibility.

2000

404. *U.S. v Jolivet*, 224 F.3d 902, 2000 U.S. App. LEXIS 23613, 55 Fed. R. Evid. Serv. (Callaghan) 670 (8 Cir 2000)

Handwriting evidence is admissible, both as to comparison and identification. Donald Lock was expert for Government, and he was "well qualified." No analysis is given, the Court of Appeals only saying that the District Court did not abuse its discretion in letting him in.

COMMENTARY: A clear and unambiguous ruling. Another relevant case that the critics never seem to know about or, knowing about, never seem to feel a balanced and academically honest discussion requires disclosure of all pertinent cases, pro or con. That is why I include every case I can find, whichever direction it went.

405. *U.S. v Mann*, 2000 U.S. App. LEXIS 6673 (8 Cir 2000)

Mann was convicted of writing a threatening letter to the President. He addressed threatening letters from the prison where he was and signed "Chuck Mann." A handwriting expert identified Mann had handprinted three threatening letters to judges and also the envelopes.

COMMENTARY: A case of routine admissibility, but in this case expert evidence as to identification of handprinting is properly admitted. It might also be a routine case of criminality by stupidity, given the defendant's self-identification in the letters and that he wrote to two other prisoners about plans to escape and their hatred for the President.

2001

406. *U.S. v Haley*, 27 Fed. Appx. 705, 2001 U.S. App. LEXIS 23630 (8 Cir 2001)

Among other convictions, defendant had "18 counts of making false entries in a bank's books and records." William Storer, a handwriting expert, testified they had been made by Haley.

COMMENTARY: This is a case of routine admissibility.

407. *U.S. v Taylor*, 253 F.3d 1115, 2001 U.S. App. LEXIS 13484 (8 Cir 2001)

The crime charged involved depositing stolen checks and then writing checks for cash and other items. Taylor contended that admission of the exemplars, from which the handwriting expert had testified at trial, was abuse of discretion. However, Taylor had admitted to writing some of the exemplars for the FBI.

COMMENTARY: A case of routine admissibility.

2002

408. *U.S. v Kehoe*, 2002 U.S. App. LEXIS 23201; 59 Fed R Serv 3d (Callaghan) 812; 310 F2 579 (8 Cir 2002); rehearing denied, 2003 U.S. App. LEXIS 361 (8 Cir 2003); *certiorari denied*, *Kehoe v U.S.*, 2003 U.S. LEXIS 3938 (2003)

Carl McClary was handwriting expert for the Government. At page 593: “The district court did not abuse its discretion in finding McClary’s testimony to be reliable.” No analysis is offered.

COMMENTARY: Since it goes against their staunchly held position, no doubt the anti-expert experts will assert this case is to be ignored since there is no explanation why the admissible is admissible, although obviously it was because both the Trial Court and the Court of Appeals considered the requirements of the Rules and of *Daubert* satisfied.

409. *Young v City of St. Charles, et al.*, 244 F.3d 623, 143 Lab Cas (CCH) P59,194, 2001 U.S. App. LEXIS 4552 (8 Cir 2001); affirming dismissal of second suit, 34 Fed. Appx. 245, 2002 U.S. App. LEXIS 8898 (8 Cir 2002); *certiorari denied*, 537 U.S. 1035, 123 S. Ct. 553, 154 L. Ed. 2d 454, 2002 U.S. LEXIS 8573, 71 U.S.L.W. 3351 (US 2002)

Young filed suit over his dismissal as a police officer, and the District Court granted motion to dismiss his suit. Upon appeal by Young, Eighth Circuit upheld granting the motion to dismiss the suit. Young had submitted copies of forms during the original hearing process on his dismissal. He was accused of submitting falsified documents, and a report by a handwriting expert was part of the basis for Young’s dismissal. In his appeal “Young also alleges that the handwriting expert was not qualified under the standards set forth in *Daubert*....” This issue was not specifically addressed any further, but the appeal was denied and the dismissal of Young’s suit by the District Court affirmed.

COMMENTARY: In order to give an authoritative opinion, a court of law need not always give all the details of why and wherefor. Most case reports simply give the final word on the matter, and often do not even state the specific decision, as when an appeal court will say it finds no merit in the appellant’s other points of error.

Document examiners will find an element in this case all too familiar in their practice. The police officials said Young submitted only copies of the requested forms that were found to be false, but he later contended that he had produced originals and that they had lost them, failing to follow proper chain-of-custody practice in submitting them to the handwriting expert. Nor did the Court of Appeals bother explaining why that contention was unconvincing.

2003

410. *Mayo v Ashcroft*, 317 F.3d 867, 2003 U.S. App. LEXIS 1227 (8 Cir 2003)

In a first hearing in immigration court, Mayo was found excludable. An appeal followed, eventually to the Eighth Circuit that remanded. In the second hearing before a different judge, the issue was whether Mayo had married in the Philippines. An affidavit purportedly by the mayor of her town said he had married her after issuing a license. Mayo claimed the mayor's signature was forged. An affidavit verifying the signature also purportedly came from the mayor, which Mayo also said was forged. Handwriting experts for Mayo testified against the authenticity of the signatures, and experts for INS said one could not tell.

COMMENTARY: After ten years in limbo, the Eighth Circuit, finding no valid marriage had taken place, said that Mayo could stay here.

411. *U.S. v Frost*, 234 F.3d 1023, 2000 U.S. App. LEXIS 31389, 55 Fed. R. Serv. (Callaghan) 1084 (8 Cir 2000); after remand, conviction affirmed, 321 F.3d 738, 2003 U.S. App. LEXIS 4016 (8 Cir 2003); rehearing denied, 2003 U.S. App. LEXIS 6881 (8 Cir 2003)

2000 U.S. App. LEXIS 31389:

Defendant's motion *in limine* was granted to prevent the introduction of expert handwriting testimony, because defendant stipulated he had written the disputed signature of a client on basis of a power of attorney, which was now lost. Thus the prejudicial effects of the proposed testimony would have outweighed its probative value. Same ruling was given on introduction of his civil deposition in which he had earlier denied having written the client's signature. District Court's *in limine* ruling was overturned regarding the deposition, but the case report does not seem to indicate whether it was also overruled regarding expert handwriting evidence.

2003 U.S. App. LEXIS 4016:

There is no mention of handwriting expert testimony, presumably because of defendant's admission of having written the client's name on several checks and other papers.

COMMENTARY: Maybe the best proof of reliability of expert opinion as to handwriting is when a suspect agrees with the conclusion, particularly to keep the expert from testifying as in this case. Not only would the expert show the falsity of the writing but also how the forger modified his own style to imitate the victim's style, thus defeating the claim of innocence based on a purportedly lost power of attorney.

2006

412. *U.S. v Bistrup and Bistrup*, 449 F.3d 873, 2006 U.S. App. LEXIS 8689 (8 Cir. 2006)

In a trial of husband and wife for fraud, a handwriting expert identified Nancy

Bistrup as writer of some documents but impermissibly as writer of others. Mistrial was denied but exhibits had to be relabeled. However, Nancy's defense opened the door to that testimony, so the government expanded its announced handwriting testimony. Also, she did not engage her own handwriting expert.

COMMENTARY: Apparently the defense had a favorable pre-trial ruling to restrict the expert's testimony but threw it away by expanding its own case. Moral to the story is that we should be careful not to overstep ourselves lest we step into a bog.

413. *U.S. v Mentzos*, 462 F.3d 830, 2006 U.S. App. LEXIS 23084 (8 Cir. 2006)

Mentzos represented himself at trial. His request for a handwriting expert among other experts was denied. At trial the prosecutor's handwriting expert identified him as writer of incriminating letters. On appeal he failed to show prejudice by the denial of experts, and he had waited till late to request the experts. Besides, evidence of guilt was overwhelming.

COMMENTARY: The old hack that one who is one's own attorney has a fool for a client brings up another consideration. Is being one's own fool to be a bigger or lesser fool than when having some other fool as one's attorney? Answer: The odds are in your favor since by far most criminal defense attorneys are dedicated and tireless advocates for justice. From my limited experience, at large the inadequate trial attorneys stand out precisely because of the rarity of their inadequacy.

2008

414. *Sow v Mukasey*, 546 F.3d 953, 2008 U.S. App. LEXIS 24061 (8 Cir. 2008)

Sow, petitioner for asylum, submitted two birth certificates. "The Forensic Document Examiner ('Examiner') attested that the typewritten certificate was in all likelihood a forgery, noting that it was produced on a photocopier and did not conform to the high quality printing process used in the production of similar documents. Although the Examiner could not definitively authenticate the handwritten certificate, he stated that it was 'probably what it purports to be.'"

COMMENTARY: Assuming use of ASTM terminology, "could not definitively authenticate" suggests that the examiner did authenticate the handwritten certificate but did so at lower level of assurance, either probably or very probably.

2009

415. *U.S. v Teter*, 2009 U.S. App. LEXIS 8194 (8 Cir. 2009)

"[Teter's] discovery that his attorney had failed to pursue obtaining a handwriting expert, and his belief that such an expert would have helped him achieve acquittal at trial for a crime he admitted committing, did not constitute a fair and just reason for withdrawing his plea..... Accordingly, we affirm the district court's judgment, we grant

counsel's request to withdraw, subject to counsel advising Mr. Teter of his right to file a petition for writ of certiorari, and we deny Teter's motion for appointment of substitute appellate counsel."

COMMENTARY: There was no expert testimony; indeed, the decision obviates the possibility of such testimony. I include the case for the irony of defendant's appeal. Hopefully the Justices had in mind the scant likelihood of Mr. Teter's finding the kind of handwriting expert he required.

2010

416. *U.S. v Acosta*, 619 F.3d 956 (8 Cir. 2010)

Acosta's visits to a child pornography web site were discovered by an FBI agent. A search warrant led to discovery of pornographic materials with handwriting that a handwriting analyst said was by Acosta.

COMMENTARY: A routine case of admissibility.

417. *U.S. v Tenerelli*, 614 F.3d 764 (8 Cir. 2010)

At trial and on appeal defense argued that handwriting expert Runyon should not have been permitted to testify on basis of late disclosure of her report. The prosecution claimed it had given the report as soon as it had received it, while defense knew of the coming testimony in other ways. The Eighth Circuit ruled that Tenerelli had not shown how he had been prejudiced by the alleged late discovery.

COMMENTARY: I suspect this is another case of all parties being equally bound by the rules, but the prosecution being more freely excused from them.

2012

418. *U.S. v Elder*; *U.S. v Solomon*; 682 F.3d 1065 (8 Cir. 2012)

Defendants were convicted of illegally prescribing controlled substances.

At page 1070: "At trial, Dr. Elder admitted he wrote the 544 original prescriptions but disputed knowing they were sent to or filled by TMS and questioned whether the refill authorization signatures were consistent with his signatures on the original prescriptions. Rostie testified that, on one occasion, she verified the legitimacy of prescriptions directly with Dr. Elder. The government's handwriting expert testified it was 'highly probable' the refill authorization initials were Dr. Elder's. Dr. Elder claimed to examine all patients named in the prescriptions, but neither Dr. Elder nor his employers could produce records for any patient"

Additionally, Elder disguised his handwriting while being interviewed by agents from DEA.

COMMENTARY: The case report did not specify that the handwriting expert testified to the disguised handwriting nor how it was determined. Also, not mentioned is a

defense motion to hold a *Daubert* hearing on admissibility of the prosecution's handwriting expert. Initially I had not found whether or not a hearing was granted or what the ruling was on the motion which I read at <http://www.juris99.com/texas/pdf/doc50.pdf>. However, later I found *U.S. v Solomon, Elder and Johnson*, Case No. 08-00026-03/05-CR-W-FJG, United States District Court, W.D. Missouri, Western Division. The decision on the *in limine* motion to preclude the government's handwriting expert from testifying was: "Ruling: Overruled. Defendant's objections go to the weight, not admissibility, of the evidence."

2013

419. *U.S. v Wells*, No. 12-1430. (8 Cir. 2013)

COMMENTARY: "Lynda Hartwick, a forensic document examiner, testified that she had examined known samples of Wells's signature and compared them with pseudoephedrine logs that purported to bear Wells's signature. Hartwick stated that it was 'highly probable' that the signatures were by the same author."

2015

420. *U.S. v Carlson*, No. 14-1780 (8 Cir. 2015)

Carlson was accused of sending letters of threat and extortion through the mail. "A handwriting expert concluded that it was 'highly probable' that Carlson had written the letters. A jury found Carlson guilty on all counts." Conviction on one count was reversed due to an error in a jury instruction while conviction on the other two counts was upheld.

COMMENTARY: The motivation for Carlson's behavior was that she fancied herself in love, an unrequited love, with a lady veterinarian. With such maltreatment resulting out of love, one wonders what maltreatment would result out of hatred.

2016

421. *Rodriguez-Quiroz, v Lynch*, No. 15-2621 (8 Cir. 2016)

COMMENTARY: The opinion of a handwriting expert was received.

9. Ninth Circuit.

1993

422. *U.S. v Durr*, 1993 U.S. App. LEXIS 30987 (9 Cir 1993)

A source said this was a *Daubert* handwriting case, but I have not been able to retrieve it.

423. *U.S. v Jeffries*, 995 F.2d 234 (9 Cir. 1993)

William DeVries, an IRS document examiner, testified at sentencing hearing that Jeffries had disguised one requested exemplar by speeding up his writing and the other by slowing down. The court found that to be obstruction of justice. Objection on appeal that handwriting examination was not a science was rejected since the Ninth Circuit had found it was in *United States v. Fleishman*, 684 F.2d 1329, 1337 (9th Cir.) (“It is undisputed that handwriting analysis is a science in which expert testimony assists a jury.”), cert. denied, 459 U.S. 1044 (1982). The objection that DeVries was unqualified was also rejected, a rejection backed by a brief summary of his qualifications.

COMMENTARY: The poor critics might well get a new headache from opinions such as this one. Not only are these regressive creatures considered as engaging in science, but they may testify to disguise in writing which necessarily addressees mental intention. Primary research back 100 years or more supports it all, but then it is a widely accepted mythology since *Exorcism of Ignorance* that these realities do not exist nor ever existed.

1994

424. *U.S. v Barone*, 71 F.3d 1442 (9 Cir. 1994)

A handwriting expert testified that Barone had signed fraudulent checks. His multiple convictions were reversed and the trial court ordered to dismiss all charges with prejudice: “We hold that the issuance of false checks by a company not otherwise engaged in interstate commerce does not satisfy the ‘affect interstate or foreign commerce’ element *1447 of 18 U.S.C. § 513, simply because the checks are issued to corporations which are themselves engaged in interstate commerce.”

COMMENTARY: One wonders whether he was subsequently tried in state court.

425. *U.S. v Gonzalez-Rincon*, 36 F. 3d 859 (9 Cir. 1994)

Gonzalez-Rincon was convicted of possession of cocaine with intent to distribute and of importation of cocaine. Her convictions were affirmed. One issue was a declaration one fills out upon entry to the United States. A handwriting expert was called “to establish that the form had been completed by a person with handwriting identical to that of Gonzalez.” She had denied the same on cross-examination. Additionally, black light revealed that the date in the INS stamp on the passport used on the day in question had been altered.

The major issue on appeal was a “monitored bowel movement” wherein she was detained, and agents waited for her to have a bowel movement in which the smuggled cocaine was found. She claimed it was error to make her undergo the experience and that the evidence recovered was obtained illegally. The trial court overruled the motion to that effect and the Ninth Circuit affirmed the trial court.

COMMENTARY: No details are given how the handwriting expert arrived at the

conclusion testified to. The burden of the dissenting opinion is that on the issue of the monitored bowel movement the conviction should have been reversed. The concurring opinion replies to the dissenting opinion. I wonder whether appeal attorneys study such published debates among justices for guidance how to present their own written arguments upon appeal? I often have the impression they are studiously oblivious of such sources of wisdom.

1995

426. *Beech Aircraft Corp. v U.S.; Evangelista v U.S.; Taubman Co., Inc., v U.S.*, 51 F.3d 834 (9 Cir 1995)

Proffered expertise on sound enhancement and linguistics was properly excluded, because what can be heard on tape is within the jury's ability. At page 842: "This Circuit has outlined four criteria to determine the helpfulness of expert testimony: '1) qualified expert; 2) proper subject; 3) conformity to a generally accepted explanatory theory; and 4) probative value compared to prejudicial effect.' *United States v Amaral*, 488 F.2d 1148, 1153 (9th Cir. 1973)." Footnote 9 says that, although *Amaral* was decided prior to Federal Rules of Evidence, Ninth Circuit still applies it.

COMMENTARY: This decision should be considered case specific in that this particular witness would not offer any assistance to this jury. It has been cited in relation to cases of handwriting expertise.

427. *U.S. v Meling*, 47 F.3d 1546 (9 Cir. 1995)

"In 1990, Joseph Meling took out several hundred thousand dollars in life insurance on his wife; in early 1991, he added accidental death benefits. All told, Meling stood to collect \$700,000 if his wife happened to die in an accident. Meling was not just being prudent; he was planning for the future. Meling, however, wasn't satisfied to leave such important matters to chance: The day after the coverage became effective, he fed his wife a capsule of cyanide-laced Sudafed. Miraculously, she survived, but Meling's amateur pharmacology continued. Worried he might be suspected in the poisoning, Meling concocted a scheme to divert official attention elsewhere. What better place to hide a tree than in the forest? So Meling laced five packages of Sudafed with lethal amounts of cyanide and planted them on drug store shelves, killing two people before Burroughs-Wellcome could institute a national recall of its product.

"This macabre scheme wasn't Meling's only attempt to divert suspicion."

Two handwriting experts testified Meling forged a signature on a poison register, thus tying him to the purchase of the poison.

COMMENTARY: The case report is a good read to make you thankful that your complaints about relatives are of a kind that by comparison are hardly worth mentioning.

1996

428. *Knapp v Gomez, et al.*, 1996 U.S. App. LEXIS 18482 (9 Cir 1996); certiorari denied, 1997 U.S. LEXIS 757 (US 1997)

The evidential value of the testimony of a handwriting expert was not outweighed by its prejudicial effects.

COMMENTARY: An expert's admissibility can be attacked on several bases, a reliability challenge being only one possibility. Presumably in this case the reliability was not challenged.

429. *Securities and Exchange Commission v American Capital Investments, Inc, et al.; Shaw v Shaffer*, 1996 U.S. App. LEXIS 27685 (9 Cir.)

"Shaw disputes that the signature on the deed was a forgery, arguing that he had no opportunity to cross-examine the Receiver's graphology expert."

COMMENTARY: The graphology expert's qualifications were not challenged, only the lack of opportunity to cross-examine was complained of. All of appellant's complaints were rejected.

430. *U.S. v Boateng*, 1996 U.S. App. LEXIS 8220 (9 Cir 1996); certiorari denied, in *Boateng v U.S.*, 519 U.S. 878, 117 S. Ct. 203, 136 L. Ed. 2d 138, 1996 U.S. LEXIS 5628, 65 U.S.L.W. 3262 (US 1996)

COMMENTARY: Two INS files were properly admitted into evidence because fingerprint and handwriting analysis showed that the named individuals were the same person, Defendant.

431. *U.S. v Hannah*, 1996 U.S. App. LEXIS 26377, 97 F.3d 1267, 96 Cal. Daily Op. Service 7524, 96 Daily Journal DAR 12351 (9 Cir 1996); certiorari denied, 1997 U.S. LEXIS 1120 (US 1997)

During deliberations in trial for bank robbery, jury asked, at page 1267, "whether Hannah could be guilty if he had not been the driver." The judge gave an aiding and abetting instruction and allowed counsel time for additional argument. Hannah argued this instruction prejudiced him. At page 1268: "The police found a fingerprint on the hold-up note that matched Hannah's, and the FBI's handwriting expert concluded 'to a reasonable degree of scientific certainty' that Hannah wrote the demand note." Later another supplemental instruction was given and additional argument permitted. The jury found Hannah wrote the hold-up note and was guilty as principal.

COMMENTARY: The only evidence of another participant was Hannah's own testimony.

432. *U.S. v Hubbard; U.S. v Lyon*, 1996 U.S. App. LEXIS 24813, 96 F.3d 1223, 96 Cal. Daily Op. Service 7098, 96 Daily Journal DAR 11619 (9 Cir 1996)

Defendants registered vehicles in California and Texas. Claiming original title documents were lost, they applied for duplicates that came back with the space for mileage figures being blank. They filled in a lower figure and altered the odometer. In a search with a warrant, the “lost” titles were found in Hubbard’s desk. At page 1227: “A handwriting expert testified that Lyon had written at least some of the mileage figures on vehicle documents.”

COMMENTARY: The handwriting expert was permitted to identify the maker of numerals, a more difficult task than for a signature or for extended handwriting or handprinting.

433. *U.S. v Maldonado, et al.*, 1996 U.S. App. LEXIS 26723 (9 Cir 1996)

Expert testimony for the government “indicated” one defendant signed money transfers and some correspondence and that two other defendants signed or filled out other documents.

COMMENTARY: Thus these were not hearsay but constituted admissions by a party.

434. *U.S. v Ramos*, 1996 U.S. App. LEXIS 15216 (9 Cir 1996)

COMMENTARY: A handwriting expert testified “that Ramos might have forged the signatures” of two others on motor vehicle documents. Which also means he might not have.

1997

435. *U.S. v Arteaga, and related cases*, 117 F.3d 388, 1997 U.S. App. LEXIS 18467, 47 Fed. R. Evid. Serv. (Callaghan) 417, 97 Cal. Daily Op. Service 5805, Daily Journal DAR 9353 (9 Cir 1997); *certiorari* denied, 1997 U.S. LEXIS 7002 (US 1997); post-conviction relief denied, 2003 U.S. App. LEXIS 4787 (9 Cir 2003)

At page 390: “The government—inexplicably—offered no proof that the writing on the relevant documents was the defendants’, nor did any witness place defendants at locations where the transfers were initiated or completed.” Some convictions were therefor reversed, the compelling reason being given in footnote 27: “Isn’t the alias like a signature, belonging only to Laverde? Can’t the jury infer that no one but Laverde would have written that name? No; a signature identifies a unique individual—a handwriting analyst can rule out any other signer with a high degree of certainty. The alias, by contrast, could have been used by anyone familiar with the scheme.”

COMMENTARY: The failure to call a forensic handwriting expert caused some convictions to be reversed, which is equivalent to saying the expertise can be a necessity and not merely adequately reliable.

436. *U.S. v Magallon*, 1997 U.S. App. LEXIS 35756 (9 Cir 1997); *certiorari* denied, 1998 U.S. LEXIS 4892 (US 1998)

Prosecution motion to exclude defense handwriting expert was at first denied and then granted after Trial Court read transcript of hearing before another judge wherein defense counsel said he would call his handwriting expert only in rebuttal to the Government's expert. The prosecution had agreed not to call the latter and did not.

COMMENTARY: I include this lest someone one day argue the exclusion was due to a finding of lack of reliability.

437. *U.S. v Stein*, remand for resentencing, 37 F.3d 1407 (9 Cir 1994); affirmed in part, reversed in part, remanded for resentencing, 1997 U.S. App. LEXIS 21267, 127 F.3d 777, 97 Cal. Daily Op. Service 7883, 97 Daily Journal DAR 12680 (9 Cir 1997)

To cover up securities fraud, Stein fabricated many forgeries. At trial for it all, he submitted in evidence another forged document, the basis for a sentence enhancement. He offered the testimony of a handwriting expert who said it was "unlikely" that Stein had himself forged the latter document. Testimony was given at sentencing hearing in effort to defeat enhancement for obstruction of justice, but it availed him nothing.

COMMENTARY: Is there no rule for crediting persistent effort?

1999

438. *U.S. v Farhad*, 1999 U.S. App. LEXIS 21846, 190 F.3d 1097, 99 Cal. Daily Op. Service 7550 (9 Cir 1999); *certiorari* denied, 2000 U.S. LEXIS 1974 (US 2000)

Representing himself, defendant was convicted on fourteen counts of mail fraud and five of false use of social security numbers.

COMMENTARY: At trial Frankie Frank offered expert handwriting and fingerprint evidence, but the appeal decision concerns only the issue that Farhad had a constitutionally unfair trial by representing himself. However, *Faretta v California*, 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975), said a criminal defendant is entitled to waive his Sixth Amendment right to counsel. The concurring opinion, cataloging Farhad's many mistakes, agrees that *Faretta* ought to be reconsidered by the U.S. Supreme Court, but meanwhile the Court of Appeals is bound by it.

439. *U.S. v Sylva*, 1999 U.S. App. LEXIS 20373 (9 Cir 1999)

On appeal one of defendant's issues was that District Court failed to hold a *Daubert* hearing on the admissibility of testimony by Larry Ziegler as handwriting expert on the basis that *Daubert* did not apply. It was abuse of discretion not to hold the requested hearing, but due to the overwhelming evidence of guilt, and handwriting evidence being a very small part of the total evidence, the error was harmless.

COMMENTARY: No ruling was made at the appeal level as to the challenges against Ziegler. The way the reason for ruling on harmlessness was worded, a small part

of the total evidence, reminds experts they are often a very minor part of a trial. As the cases discussed herein indicate, rarely, if at all, does the prosecution appeal a limitation placed on its handwriting expert.

2000

440. *U.S. v Pham*, CR99-297 (9 Cir. 2000)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

441. *U.S. v Santillan*, 1999 U.S. Dist. LEXIS 21611 (D.C. Northern Dist. CA 1999); 243 F.3d 1125 (9 Cir 2000)

In District Court, defendant moved for exclusion of Susan Morton's testimony because of failure to disclose as required and failure to meet *Daubert/Kumho* criteria. After two defense letters of request, Government's opposition to defendant's *in limine* motion included Morton's qualifications and bases for her opinion. That last minute, forced compliance was fine with the Court. As to the *Daubert/Kumho* challenge, the Court said that the Government's answer of past admissibility is now beside the point. As to Kam's study, the criticisms of Risinger, *et al.*, were more persuasive to the District Court, while Kam apparently refused to disclose individual performance data. So the District Court "split the baby." The Ninth Circuit's decision, 243 F.3d 1125 (9 Cir 2000), did not address this issue.

COMMENTARY: I believe it is standard not to disclose data on individual subjects in a research study. Subjects may be identified by some code, but it would seem to be unethical to disclose an individual's personal identity and data. When reported cases mention Government violation of the rules, there is hardly ever a sanction, and often there is positive reward, which is hardly a fair and equal treatment of all parties. Though the anti-expert experts are nitpickers when writings go against their opinion and uncritical when they go with their opinion, the Kam studies are flawed more fundamentally than the critics say they are. One, they start with the two purported "principles" of everyone writing differently both from others and from oneself. Two, they buy into the same faulted notion of science that the critics and *Daubert* hold to.

2001

442. *Commonwealth of the Northern Mariana Islands v Bowie*, 2001 U.S. App. LEXIS 4366, 243 F.3d 1109, 82 Empl. Prac. Dec. (CCH) P40,968, 2001 Daily Journal DAR 2947 (9 Cir 2001); amended on denial of rehearing, 2001 U.S. App. LEXIS 4368, 243 F.3d 1109 (9 Cir 2001)

Bowie was convicted of murder and kidnaping. Four witnesses for the government, who had received a good deal from the government, testified against him,

but an unsigned letter was obtained by government investigators before trial indicating the four were conspiring to blame Bowie by giving joint perjury. The prosecution did not bother investigating the matter nor have a handwriting expert examine the letter to establish authorship. At trial, when counsel for Bowie's co-defendant wanted to present expert handwriting evidence that his client did not write the letter, the prosecutor objected and asked for time to conduct his own handwriting examination. He never did up to the time of the appeal. Requesting rehearing on the reversing of conviction and remanding for new trial, the prosecution stated it needed time to have the letter examined by a handwriting expert. The Court of Appeals said that was too little too late. The report at 243 F.3d 1109 is scathing in its assessment of the behavior of the prosecution throughout the case.

COMMENTARY: Though no handwriting expert evidence was presented at trial, the fact that it was not weighed large in the mind of the Court of Appeals as to the trial not being constitutionally fair and just.

443. *U.S. v Och*, 16 Fed. Appx. 666, 2001 U.S. App. LEXIS 17077 (9 Cir 2001)

"Och asserts that it was error...for the district court to admit expert testimony of the handwriting examiner, Cunningham, because of the unreliability of the field" or alternatively to permit testimony on authorship and that the expert was unqualified. Additionally, it was error not to give a jury instruction on the shortcomings of the field. Cross-examination on qualifications was limited to authorship of scholarly articles, reliability and scientific bases. Nevertheless, there was no abuse of discretion nor constitutional error.

"We need not and do not decide whether the district court erred in allowing Cunningham's expert testimony or in instructing the jury because we conclude that any possible error related to the expert testimony was harmless. There was overwhelming evidence [of guilt]." If the expert testimony had been excluded, "the jury would have more than likely convicted...."

COMMENTARY: Again the handwriting expert is a minor and dispensable element of proof. This case provides a new argument why an expert should be admitted in face of a *Daubert* challenge: The expert testimony will be harmless even if an error to let in! However, if the presenting attorney ever thought the proffered expert would be harmless, I doubt the expert would even be considered for a proffer.

444. *U.S. v Steger*, Phoenix, AZ (9 Cir. 2001.)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

2002

445. *U.S. v Giorgies*, 29 Fed. Appx. 472, 2002 U.S. App. LEXIS 1024 (9 Cir, No. 01-10047, 2002); *certiorari* denied in *Giorgies v U.S.*, 535 US 1087, 122 S. Ct. 1982, 152 L. Ed. 2d 1039, 2002 U.S. LEXIS 3742, 70 U.S.L.W. 3708 (2002)

“The expert testimony on handwriting did not play a significant role, in that the jury was provided with handwriting examples allowing them to make independent assessment.”

COMMENTARY: Once more we handwriting experts are not really all that important in the greater scheme of things.

446. *U.S. v Hermanek*, and related cases, 289 F.3d 1076 (US Ct App. Cir. 9 2002)

Handwritten logs were involved in this drug trafficking case, and the court provides much information regarding their legal handling.

FBI Special Agent John Broderick qualified as an expert to translate pig Latin in intercepted phone conversations as well as to interpret code words and numbers as referring to different types and amounts of cocaine. Defendants objected to the latter since several codes were new to Broderick in this case, and he interpreted some of the same ones differently when they came up. The appeal court said it was because drug dealers used them in different meanings, though one can just as easily believe interpretation depended on prosecutorial convenience.

COMMENTARY: My understanding of this type of case is that the expert witness is more like a linguist who can translate from one language to another versus being a linguistics or stylistics expert who offers an identification of the writer or speaker by the personal use made of a language.

447. *U.S. v Johnson*, 2002 WL 44242, 30 Fed. Appx. 685, 2002 U.S. App. LEXIS 525 (9 Cir 2002); *certiorari* denied, 537 U.S. 1241, 123 S. Ct. 1374, 155 L. Ed. 2d 213, 2003 U.S. LEXIS 1889, 71 U.S.L.W. 3567 (US 2003)

The admissibility of handwriting expert identification of defendant’s handwriting on I-94 forms is affirmed as not being abuse of judicial discretion.

COMMENTARY: In this as in *Giorgies*, the Federal Supreme Court denied *certiorari*, which, as far as I know, is the closest we have come to having a Supreme Court ruling on the post-*Daubert* admissibility of handwriting expertise.

448. *U.S. v Lindsey*, CR No.00-00482DAE (9 Cir. 2002)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was received unconditionally. I have not been able to obtain a copy of the case report.

2003

449. *Hall v Director of Corrections; California State Attorney General*, 2003 U.S. App. LEXIS 18501, 343 F.3d 976, 2003 Cal. Daily Op. Service 8169, 2003 Daily Journal DAR 10208 (9 Cir 2003)

Hall was convicted of murder based on his confession and on two documents from a jail house informant, Cornelius Lee, there being no physical evidence against him. The documents were admitted into evidence without the informant's testimony to authenticate them. In a post-conviction evidential hearing, expert testimony for both prosecution and defendant confirmed erasures on the documents, which purportedly reported questions from the informant and answers by Hall, each taking turns to write. Lee testified he would rewrite the question after Hall wrote his answer. Hall's expert testified to erasures, disturbances of fiber and overwriting. The trial court, holding that Lee's testimony was not credible, "except to the extent that it is supported by scientific evidence" [note 7], ordered a new trial, but this was reversed by California Court of Appeals. All further state actions by Hall were to no avail. The Ninth Circuit reversed the conviction and ordered an unconditional writ of *habeas corpus* unless a new trial was granted within 120 days.

COMMENTARY: The handwriting expertise to detect overwriting by Lee combined with other expertise to present what the trial court characterized as "scientific evidence." The handwriting and document expert evidence was a significant factor in granting the reversal.

450. *U.S. v Alli*, 2003 U.S. App. LEXIS 19526, 344 F.3d 1002, 92 A.F.T.R.2d (RIA) 6163, 62 Fed. R. Evid. Serv. (Callaghan) 647 (9 Cir 2003)

The testimony of the government's handwriting expert was part of the "ample evidence" for conviction. The prosecutor failed to correct false testimony by two government witnesses, but despite that the conviction "must" be affirmed.

COMMENTARY: A case of routine admissibility and, for some prosecutors at least, routine reliance on perjury.

451. *U.S. v Urich*, CR-S-02-454-RLH (LRL) (9 Cir. 2003)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. I have not obtained a case report.

452. *U.S. v Xie*, CR 03-00137 CRB (9 Cir. 2003)

COMMENTARY: The notation on the SWGDOC list states: "Full testimony admitted, including issues involving hand printing and Asian class characteristics." I have not been able to obtain a copy of the case report.

2004

453. *Nettles v Newland*, 105 Fed. Appx. 144, 2004 U.S. App. LEXIS 14869 (9 Cir 2004), affirming: *People v Nettles*, 2000 Cal. LEXIS 8640 (CA 2000); *certiorari* denied, 125 S. Ct. 905, 160 L. Ed. 2d 801, 2005 U.S. LEXIS 104, 73 U.S.L.W. 3398 (US 2005)

COMMENTARY: Testimony of a handwriting expert was received.

454. *U.S. v Prime*, 2002 US Dist LEXIS 18629, 220 Fed. Sup.2d 1203 (W.D. Wash. 2002); affirmed, 363 Fed.3d 1028, 2004 U.S. App. LEXIS 7365, 64 Fed. R. Evid. Serv. (Callaghan) 219 (9 Cir 2004); *certiorari* denied in *Prime v U.S.*, 125 S.Ct. 1005, 160 L.Ed.2d 1007, 2005 U.S. LEXIS 1067, 73 U.S.L.W. 3438 (US 2005); vacated by, remanded by, motion granted by *Prime v U.S.*, 125 S. Ct. 1005, 160 L. Ed. 2d 1007, 2005 U.S. LEXIS 1067 (U.S., 2005); on remand at, amended by *U.S. v Prime*, 2005 U.S. App. LEXIS 27272 (9th Cir. Wash., Dec. 14, 2005); substituted opinion, conviction affirmed, sentence remanded, *U.S. v Prime*, 431 F.3d 1147, 2005 U.S. App. LEXIS 27276 (9th Cir. 2005); sentence affirmed, *U.S. v Prime*, 225 Fed. Appx. 466, 2007 U.S. App. LEXIS 6263 (9 Cir. 2007)

220 FS2 1203:

This is a counterfeiting case in which Secret Service expert Kathleen Storer identified portions of 76 exhibits as having been written by which of three suspects, using 114, 14 and 112 pages of exemplars. The Court reviews handwriting cases applying *Daubert*. Bottom line is that the Court rules on admissibility of the proffered evidence in the context of the current case, not on the expertise in general nor on academic disputes. An expertise need not be proven perfect. All four *Daubert* factors were met to the satisfaction of this judge. At page 1216 the double edged sword of the critics' position is wisely given: "However, the apparent recent trend to exclude FDE testimony is a result, the Court believes, of an excessively rigid application of *Daubert*. Since *Daubert* applies to both criminal and civil cases, such an approach may, one day, result in unfortunate consequences for a criminal defendant who is denied the ability to present the best evidence that he did not author an extortion demand or pen a forged signature. The Court declines to follow this trend on the record before it."

NINTH CIRCUIT DECISION:

The District Court's rulings are fully upheld as to admission of handwriting expertise. The Ninth Circuit reiterates at length the bases for the rulings and ends by citing six cases from six other Federal Circuits which ruled handwriting expert testimony admissible under *Daubert*.

COMMENTARY: This case report for District Court, 220 FS2 1203, is highly recommended both for review of the dispute and for the legal reasoning it provides. That Federal Public Defenders appear particularly anxious to have all such expertise tossed out seems fraught with promise of much malice to their own work.

The case report for the Ninth Circuit, 363 F.3d 1028, discusses at length how each

Daubert factor was met and how the justices view the current weaknesses in the field. For example: “While Kam’s study demonstrates some degree of error, handwriting analysis need not be flawless in order to be admissible.” If any of us needed to be flawless in order to perform any service, we would all have to stay in bed on any given morning for fear of flaw. Only those who see themselves as flawless demand flawlessness in others, and there may be no greater flaw than this.

2007

455. *Gantt v Roe*, 389 F.3d 908, 2004 U.S. App. LEXIS 24283 (9 Cir.); appeal after remand, *Gantt v Scribner*, 2007 U.S. App. LEXIS 17863 (9th Cir. 2007)

At page [*4]: “The prosecution’s handwriting expert testified that there were ‘good indications’ the victim ‘possibly wrote the numerical notations, particularly the numbers 88031227034.’” Later this is described as “not particularly strong” and “somewhat tentative conclusion.” Then in footnote 9 the inadequacy of a previous government handwriting expert is used to bolster the doubtfulness of the present testimony: “We note that handwriting analysis is, even in the best of circumstances, not an exact science. A highly respected district judge has concluded that such evidence must be used with caution because it has ‘serious problems’ under the *Daubert* and *Kumho Tire* standard for scientific reliability. See *United States v. Hines*, 55 F. Supp. 2d 62, 68 (D. Mass. 1999) (*Gertner, J.*).” This weakness gave greater strength to claim of error in nondisclosure of exculpatory evidence by the prosecution, and conviction was overturned and the case remanded for further proceedings.

COMMENTARY: Testifying several years after *Hines*, the handwriting expert in *Gantt* surely ought to have learned a lesson from *Hines* and similar cases. Today, six years since *Gantt*, hopefully all of us who testify have finally paid attention. The *Hines* case was discussed earlier.

456. *U.S. v Jawara*, 462 F.3d 1173, 2006 U.S. App. LEXIS 23468, 71 Fed. R. Evid. Serv. (Callaghan) 322 (9 Cir. 2006); amended, 474 F.3d 565, 2007 U.S. App. LEXIS 1132 (9 Cir. 2007); affirmed, 474 F.3d 565, 2007 U.S. App. LEXIS 1136 (9 Cir. 2007)
2006 U.S. App. LEXIS 23468:

Affirming convictions for document fraud and conspiracy to commit marriage fraud to avoid the immigration laws.

In hearing on *in limine* motion to exclude testimony of document examiner, Carolyn Bayer-Broring, motion was denied, and a separate *Daubert* hearing was not needed. The Supreme Court never mandated the form the gatekeeping process should follow. It was error that no explicit statement of reliability was made by the trial court, but it was harmless error given the expert’s extensive qualifications and her helpfulness to the jury that clearly showed her reliability. She testified to the falsity of purported Sierra Leone documents.

COMMENTARY: 2007 U.S. App. LEXIS 1136 repeats and affirms what was said regarding Bayer-Broring. The Ninth Circuit had ruled previously that a trial court need not conduct a *Daubert* hearing, just so long as the gatekeeping function of explicitly finding the proffered expert testimony to be sufficiently reliable is satisfied. The case report does not indicate that a handwriting examination was involved; however, I include the case to illustrate that document examiners have prevailed in pre-trial challenges on other expert issues than just handwriting.

457. *U.S. v Yagman*, 2007 WL 4409618 (9 Cir. 2007)

Bonnie Beal, handwriting expert, testified that she worked as a forensic document examiner for the Indiana State Police and was certified by the American Board of Forensic Document Examiners. Over defense challenge, she was found to be admissible. Mark Denbeaux was also permitted to testify but had limits placed on his testimony. The usual alleged academics on either side are cited and discussed as are most of the usual past cases.

COMMENTARY: A case of routine admissibility and the boringly routine and repetitive jabber in the long since banal debate on an issue deserving far better.

2009

458. *U.S. v Mitchell*, No. 08-10323. United States Court of Appeals, Ninth Circuit. Filed October 2, 2009.

It was not error to allow “Marguerite McHenry, the government’s expert forensic document witness, to testify that she believed Mitchell authored the demand note recovered from the Compass Bank robbery.” Further, “The court is not required to hold a separate *Daubert* hearing, so long as it makes an explicit finding of reliability. [Citation omitted.] Failure to make the explicit finding is harmless where the expert’s qualifications and experience, and the relevance and value of the testimony to the jury, satisfy the requirements. *Id.* at 583.

“Extensive pre-trial briefing and argument informed the court of McHenry’s qualifications and experience, which also were presented to the jury. McHenry’s testimony of handwriting analysis procedures satisfied the *Daubert* reliability criteria.”

COMMENTARY: Another defense attorney seems to have paid attention to the eminent law professors rather than to the courts as to what the law is or is not, and to the same pros rather than to knowledgeable experts as to what technical and scientific reality is.

2011

459. *In re Dead Oak Estates, Inc., Debtor; Burkart and Vineyard, v Kupka*; BAP No. CC-11-1323-KiDJu, Bk. No. 08-28230-MM, Adv. No. 09-02730. (Bankr. App. Panel, 9 Cir. 2011)

David Moore and James Blanco testified for opposing sides.

“On cross-examination, Moore testified that he was not asked to determine whether Cynthia’s questioned signature was written by Robert. He did opine, however, that since their signatures were so sufficiently dissimilar it would be like comparing apples and oranges, and he would be unable to determine whether or not Robert wrote Cynthia’s signature.”

On the contrary, Blanco testified “that he saw no traces of Robert’s signature characteristics in Cynthia’s signature that indicated Robert signed for her.”

COMMENTARY: There were other issues the two experts testified to, but this was the key issue. If the two signatures were like apples and oranges, then, with no trace of apple in the orange or of the orange in the apple, the experts should agree. When experts, attorneys and judges talk about not being able to compare apples and oranges, I always think I would hate to send them to the store to buy either one. No telling what one will return with if not being able to compare the two to determine which is which. Or they might bring back potatoes or coconuts.

2012

460. *U.S. v Taylor*, No. 10-10583. (9 Cir. 2012)

On the first day of trial the Government produced the report of its handwriting expert which it itself had just received. Defense counsel had done nothing about the prospect of which counsel had been previously notified, nor did anything to obtain an opportunity for a defense expert. Thus, for these and other reasons defendant had no complaint.

COMMENTARY: This is another case supporting the unwritten and unstated rule that negligence by defense counsel is the sole responsibility of defendant while ill-advised action by defense counsel is due to some kind of astute tactical or strategic consideration, being both unrecorded and unfathomable.

2013

461. *Chen v Holder*, No. 11-72333 (9 Cir. 2013)

Chen appealed adverse credibility finding of the immigration judge who denied asylum:

“However, the testimony and report of the forensic document examiner opining that Chen's documentary evidence is counterfeit supports the adverse credibility finding

and goes to the heart of the claim.... It is not material that the forensic document examiner could not state with certainty that the documents are fraudulent, since her report and testimony seriously called the documents' authenticity into question and the documents go to the heart of Chen's claim.”

COMMENTARY: I have a dozen or more “reports” by document examiners for immigration service, now Homeland Security, that show no substantial differences except they are titled for different cases and signed by several government examiners and their superiors. They provide no information other than a conclusory opinion backed by claims of esoteric examinations using sophisticated pieces of equipment that are mysterious to the layperson. If I properly understand an explanation given to me, *Daubert* and its aftermath of rules are not binding in Immigration Court.

2015

462. *Shields v Frontier Technology LLC, d/b/a MicroAge LLC; et al.*, No. 12-16553 (9 Cir. 2015)

The sole footnote reads: “At the evidentiary hearing to determine the authenticity of Shields' signature, the district court did not abuse its discretion by admitting the sworn testimony of an expert forensic document examiner. Contrary to Shields' argument, expert disclosures and reports are required only as to experts whom a party ‘may use at trial.’ Fed. R. Civ. P. 26(a)(2)(A)-(B).”

COMMENTARY: I think the rules on disclosure should apply to all legal hearings, not only before a judge but in any hearing, such as arbitration, where someone has the authority of a judge in some way. If trial by ambush and surprise is undesirable in a courtroom, it is equally undesirable in any adversarial proceeding where one stands to lose liberty, reputation or riches of some kind.

10. Tenth Circuit.

1996

463. *U.S. v Bruce*, 778 F.3d 1506, 1996 U.S. App. LEXIS 5299 (10 Cir 1996)

COMMENTARY: Convicted of extortion and mailing threatening communications, defendant's sentence was enhanced when FBI expert identified him as writer of a third letter he had asked a government informant to type and mail for him.

464. *U.S. v Hardwell*, and related cases, 80 F.3d 1471, 1996 U.S. App. LEXIS 6594, 44 Fed. R. Evid. Serv. (Callaghan) 571 (10 Cir 1996); rehearing denied in part and granted in part, 1996 U.S. App. LEXIS 16617

COMMENTARY: Authenticity of exhibits in dispute was established by government's handwriting expert.

465. *U.S. v McClelland*, 1996 U.S. App. LEXIS 5201, 1999 Colo. J. C.A.R. 1662 (10 Cir 1996)

COMMENTARY: Testimony from a handwriting expert was received.

466. *U.S. v Miller; U.S. v Hicks*; 84 F.3d 1244, 1996 U.S. App. LEXIS 11576 (10 Cir 1996); *certiorari* denied, 1997 U.S. LEXIS 6756 (US 1997)

COMMENTARY: A handwriting expert testified as to who wrote printing and numerals.

467. *U.S. v Spring*, 80 F.3d 1450, 1996 U.S. App. LEXIS 6162, 44 Fed. R. Evid. Serv. (Callaghan) 395 (10 Cir 1996)

In a trial for bank robbery, “The defense presented testimony from a handwriting expert, who expressed the opinion that Mr. Spring did not write the demand note.”

The jury heard testimony that after a police line up, participants asked Spring why they were told to say certain things. He replied that he did not know since that was not what they had said during the robbery.

COMMENTARY: Clever defendants can come up with many astute ways for self-incrimination.

1997

468. *U.S. v Scarborough*, 128 F.3d 1371, 1997 U.S. App. LEXIS 29790, 47 Fed. R. Evid. Serv. (Callaghan) 1395, 158 A.L.R. Fed. 725, 1997 Colo. J. C.A.R. 2609 (10 Cir 1997)

Beverly Mazur, handwriting expert with Nebraska Police Crime Lab, testified that ten Express Mail labels had been made out by the same person. Some of them had Scarborough’s name and address. Another issue of interest is that the drug-alert dog had an on-the-job reliability rate of 92% correct. On loan to the Postal Service the rate dropped to 79%, but that did not make reversible error when a search was based on the dog’s alert.

COMMENTARY: If humans had as tough of an assignment as drug-alert dogs, could they achieve as impressive a reliability record?

469. *Wallis, et al., v Carco Carriage Corp., Inc.; Campbell Hardage, Inc., v Nash*, 1997 U.S. App. LEXIS 25309, 1997 Colo. J. C.A.R. 2092 (10 Cir 1997)

“[*27] The plaintiffs called a handwriting expert to testify that Nash’s signature on the [car] rental agreement was a forgery, theorizing that the rental clerk had signed Nash’s name because he was too intoxicated to sign his own name.”

COMMENTARY: Plaintiffs prevailed.

1998

470. *U.S. v Renteria and Renteria*, Fed. Dist. Ct. NW, No. CR 95-320 JP, Order Entered on Docket 10/3/95 [ABFDE Resource Kit]; 925 FS 722 (D. NM 1996); vacated, 138 F.3d 1328, 1998 U.S. App. LEXIS 4706, 1998 Colo J Bar 1408 (10 Cir 1998)

Order Entered 10/3/95:

Defendant brought *in limine* motion to suppress anticipated testimony of document examiner, Joseph A. Mongelluzzo, that defendant's signature was on a DEA Consent to Search Form. The motion was denied as having been filed untimely, after the deadline set by the Court to which neither party had objected.

COMMENTARY: No legal analysis was offered by the judge since the motion was brought untimely. Attorneys at times are not permitted by some judges to procrastinate, however rarely.

471. *U.S. v Proctor*, 98-2 US Tax Cas (CCH) P50, 884; 82 AFTR 2d (RIA) 7168; 1998 Colo JCAR 5966; 1998 U.S. App. LEXIS 29820 (10 Cir 1998)

The District Court erred in finding the Government had met the requirement of disclosing before trial the reasons and bases of expert opinions of document examiner James Puckett. "The government was required to provide a foundation for Mr. Puckett's opinions prior to trial." However, defendants knew his opinion, he testified in full to methodology, they could cross-examine, and they could have asked for continuance to prepare to discredit him, but "this they failed to do."

COMMENTARY: One has the nagging suspicion that rules are for defendants to abide by without allowance for the least failure, but for the Government to have any plausible excuse, particularly one that adds more burden to the defense. The expertise itself was not challenged, but a challenge upon appeal to Puckett's qualifications failed.

1999

472. *U.S. v Battle*, No. 98-3246, 1997 (D.C. No. 97-40005-01, District of Kansas); WL 596 966 (10 Cir. Aug. 6, 1999); 117 FS2 1175 (D.C. KS); 188 F.3d 519 (10 Cir 1999); cert. denied, 120 S.Ct. 602 (1999) [Court of Appeals' Order and Judgment.]

The third of six issues Battle raised on appeal from drug conviction was: "(3) the district court erred in admitting expert testimony concerning a signature on a Western Union money transfer record." Dennis McPhail, a document examiner, was found fully qualified and testified from Battle's exemplar signatures that he had signed "Anthony Jenkins" to the money transfer record. In reply to challenge that McPhail's testimony did not meet *Daubert* criteria, the Court of Appeals said there was no abuse of discretion by the Trial Court, and: "Our study of the record on appeal convinces us that McPhail's proffered testimony met the reliability and relevancy test of *Daubert*." But if it were error, it was harmless considering the evidence as a whole. "The Western Union money transfer

was merely one bit of circumstantial evidence tending to corroborate the testimony of, as we said, a plethora of witnesses linking Battle to the conspiracy.”

COMMENTARY: This unequivocal ruling on reliability, which the critics seem not to have been able to find in their diligent research for pertinent court cases, is surely unequivocal. Note that Courts of Appeal almost routinely say that a thing was not error then immediately say that, even if it were, it was harmless for some reason. This is the same mentality of trial lawyers [after all, judges are trial lawyers!] who routinely argue their position is unassailably right, but just in case the judge should find it not, here is a second and even third backup position that is equally or more unassailably right. The law school professors, who are anti-expert critics and apparently inept trial lawyers, at times hold this trait to be an indication that the backup ruling of an appeal court is evidence that the first ruling was wrong or at least highly suspect. But that argument is used only when the first ruling is disagreeable to the critic.

2000

473. *U.S. v Akers*, 106 F.3d 414, 1997 U.S. App. LEXIS 25952 (10th Cir. Colo., 1997); 215 F.3d 1089, 2000 U.S. App. LEXIS 13108, 2000 Colo. J. C.A.R. 3377 (10 Cir. 2000); *certiorari* denied, *Akers v U.S.*, 531 U.S. 1023, 121 S. Ct. 591, 148 L. Ed. 2d 506, 2000 U.S. LEXIS 7977 (2000)

“Robert Theide, an expert in the field of forensic document examination, testified that it was his opinion that Akers had endorsed the back of one of the two counterfeit Coastal Corporation checks. Taken together, the testimony of Landuyt and Theide was sufficient to support an inference that Akers was responsible for the production [*26] and presentation of the counterfeit Coastal Corporation checks for deposit to Commercial Federal Bank and that he knew they were counterfeit.”

COMMENTARY: Defense wanted its own handwriting experts but that was properly denied.

474. *U.S. v Campos*, 221 F.3d 1143, 2000 U.S. App. LEXIS 17444, 55 Fed. R. Evid. Serv. (Callaghan) 226 (10 Cir 2000)

In a conviction for interstate transportation of child pornography by computer, “the document examiner testified that it was probably Mr. Campos’s handwriting on a document with the file name resembling the file name that contained a pornographic photograph.”

COMMENTARY: However, a probability added to a resemblance hardly seems to amount even to preponderance of evidence, much less beyond a reasonable doubt. Presumably there was other compelling evidence for conviction.

2001

475. *Gilmer v Colorado Institute of Art, et al.*, 12 Fed. Appx. 892, 2001 U.S. App. LEXIS 13743, 2001 Colo J CAR 3273 (10 Cir 2001)

In her suit against the Institute, Gilmer alleged that Dan Swanson had sexually harassed her and offered a letter from him in support. The District Court held a hearing in which handwriting experts for each side testified. The Court found Gilmer “had forged the threat” and struck all claims of harassment by Swanson from the complaint. On appeal, Gilmer alleged that her Seventh Amendment rights had been violated by a pre-trial finding of forgery. However, at pages [*7] and [*8] the Court of Appeals says: “We see no problem in the court’s addressing the forgery question itself in the manner in which it did.... Many courts have found the fabrication of evidence to be an abusive litigation practice, or even a type of fraud on the court..... A trial court clearly has the authority to examine the authenticity of evidence before submitting it to a jury. *See generally Fed. R. Evid. 901*. And Gilmer obviously has no right to submit fabricated evidence to the jury.” Several case citations are given in support of these statements.

Defense expert said the threat part of the letter was a tracing, and plaintiff’s expert did not contradict that, even agreeing that the threat part was in a different ink than the rest of the letter. Swanson testified his original letter was three, not two pages, and without marginal writings where the threat was. He said the threat was made of words from his lost third page.

COMMENTARY: The report suggests that both experts were ethical and competent, since they essentially agreed.

2002

476. *U.S. v Hernandez*, Tenth Circuit, June 19, 2002, No. 01-1194 (D.C. No. 99-CR-75-N, District of Colorado), 42 Fed Appdx 173, 2002 U.S. App. LEXIS 12153, 89 AFTR 2d (RIA) 3049

Conviction was upheld for making and for aiding and abetting the making of false claims against the United States. Sole issue on appeal was whether District Court abused its discretion in allowing handwriting identification. “Believing that the district court in so doing did not abuse its discretion, we affirm.” After a *Daubert* hearing the District Court ruled that Joseph Mongelluzzo was qualified as an expert on questioned documents but was restricted to “identifying the physical mechanics and characteristics of handwriting and then pointing out similarities....” He could not say defendant wrote the tax documents in question nor even that they had a common authorship. The Government did not appeal the partial exclusion. The District Court’s memorandum and order “considered all aspects of *Daubert* and *Kumho*, and then issued its Solomonian order which apparently pleased and displeased both parties!”

COMMENTARY: Details of the *in limine* testimony are not given so the case

report must be taken on face value. However, it seems that the Government never appeals the restrictions placed on its handwriting expert witnesses, which makes one suspect federal prosecutors do not consider them worth the bother, a most unfortunate and self-defeating attitude if it be so.

2003

477. *McElwee v Immigration and Naturalization Service*, 48 Fed. Appx. 716, 2003 U.S. App. LEXIS 20795 (10 Cir 2003)

In summary, if McElwee had been married in the Philippines as documents submitted by INS indicated, she was deportable for having lied about her marital status and because her current marriage was void. She denied the former marriage, but the judge ruled against her. She obtained a handwriting expert who said of her signatures on the documents that it was “highly probable” she had not signed. However, failure of her first attorney did not prejudice her because the immigration judge, considering her expert’s opinion the second time around, nevertheless found her signatures on the documents to look like hers and took into consideration other evidence in ruling against her.

COMMENTARY: A case that reminds us the expert handwriting opinion most often cannot carry the entire burden of proof.

2004

478. *Bryan v Gibson*, 276 F.3d 1163, 2001 U.S. App. LEXIS 27249 (10 Cir 2001); affirmed in part, vacated in part, *Bryan v Mullin*, 335 F.3d 1207, 2003 U.S. App. LEXIS 14576 (10 Cir 2003); certiorari denied, 158 L. Ed. 2d 472, 124 S. Ct. 1877, 2004 U.S. LEXIS 2613 (US 2004); writ of *habeas corpus* denied, 2004 U.S. App. LEXIS 11172, 2004 U.S. App. LEXIS 11247 (10 Cir 2004). Original state case: *Bryan v State*, 935 P.2d 338 (OK Cr Ap 1997); 1997 OK CR 69, 948 P.2d 1230, 1997 Okla. Crim. App. LEXIS 71 (OK Crim App 1997); certiorari denied, 522 U.S. 957, 139 L. Ed. 2d 299, 118 S.Ct. 383 (1997)

COMMENTARY: Bryan’s conviction for murdering his aunt was affirmed. A handwriting expert testified that Bryan had forged her name on promissory notes and checks.

479. *Torres v Lytle*, 90 Fed. Appx. 288, 2004 App. LEXIS 1057 (10 Cir 2004); 461 F.3d 1303, 2006 U.S. App. LEXIS 23190 (10 Cir. 2006)

Torres was convicted of misdemeanor property destruction. The victim witness, Mr. Medina, later received a threatening letter. Torres was convicted of sending the letter. “At the retaliation trial, the government called only two [*5] witnesses. The first was a handwriting expert, who presumably testified that Mr. Torres could have authored the letter. The second was Mr. Medina.” The report concludes: “Because the record below

does not provide sufficient evidence on which a jury could have convicted Mr. Torres, we VACATE” denial of petition for habeas corpus and remand.”

COMMENTARY: After a second conviction, denial of *habeas corpus* petition was again reversed.

480. *U.S. v Lewis*, 113 Fed. Appx. 336, 2004 U.S. App. LEXIS 22269 (10 Cir. 2004); *certiorari* denied, *Lewis v U.S.*, 161 L. Ed. 2d 199, 2005 U.S. LEXIS 2166 (U.S. 2005)

COMMENTARY: After a guilty plea and at the restitution hearing the court received testimony from a handwriting expert.

2005

481. *The Estate of Trentadue, by and through its Personal Representative Aguilar, et al., v United States, et al.*, and related cases, 397 F.3d 840, 2005 U.S. App. LEXIS 1811 (10 Cir. 2005)

COMMENTARY: The entire statement on expert handwriting testimony is this: “A handwriting expert testified that the note written on Trentadue’s cell wall—‘My Mind No [*43] Longer It’s Friend Love ya. Familia!’--matched previous samples of Trentadue’s handwriting. The district court concluded that this writing could reasonably be regarded as a suicide note.”

482. *U.S. v Kregas*, 149 Fed. Appx. 779, 2005 U.S. App. LEXIS 19818 (10 Cir. 2005)

At page [*10]: “Beverly Mazur, a Questioned Documents Examiner for the City of Aurora Police Department, testified she compared Onesty’s signature on the application with her known signature and concluded the signature on the application was a simulation of her actual signature. However, Mazur could not determine who forged Onesty’s signature, including whether Kregas was the forger.”

COMMENTARY: Identifying the writer of a forged signature may be the most difficult task handwriting experts face, indeed, most often impossible. The writer tries to make the signature look as if the victim wrote it and as if the actual writer did not. It is a brief effort, so the effort has small chance to break down and revert to the writer’s customary habits.

2007

483. *U.S. v Weiss*, Criminal Case No. 05cr 00179LTB (10 Cir. 2007)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

2011

484. *U. S. v Blechman*, 657 F.3d 1052 (10 Cir. 2011)

Blechman's convictions on charges of mail fraud and conspiracy to commit mail fraud were affirmed. At page 1061: "Debra Campbell, an expert in forensic document examination, also testified on behalf of the Government. Having compared Blechman's handwriting samples to the writing on the four postal money orders identified by Thompson, she opined that Blechman prepared all of the money orders." The money orders were used to pay filing fees for fictitious bankruptcies to which foreclosed houses were attached to prevent their sale by the lenders.

COMMENTARY: Filing bankruptcy also seems to be a favored method of escaping a sure judgement on a fraudulent debt. In one case two brothers filed bankruptcy, which dodge was defeated at much delay and cost. One brother died, and the other claimed insanity. Plaintiff counsel and I agreed to the old adage: Crazy as a fox. That was defeated at much more cost and delay, until the property was finally repossessed by the plaintiff who had lent to his cousins at generous terms and gave them funds besides because his Mom on her deathbed had asked him to care for his cousins. Their abusive fraud was hardly a fitting response to familial largess. After repossession there were major costs of cleaning up and repairing the property before it could be sold. I testified that signatures on loan documents had been disguised. And there had been other ploys, the last being to persuade relatives and friends the brothers were being meanly abused.

2015

485. *In re Dawn M. Dey, Debtor. Hill v Jankowski*. BAP No. CO-14-026 (U.S. Bankruptcy App. Panel 10 Cir. 2015)

Dey said she repaid Jankowski, her estranged husband, \$8100 in the form of a cashier's check. He denied it when the Trustee attempted to recover the funds. The Trustee sued but seemed to have made less than a thorough job of it. Jankowski insisted he never got the funds and that, if the Trustee could trace the funds through his bank's records, that would prove him wrong. The judge found for Jankowski. The Trustee then found the evidence needed and filed for a new hearing where he brought in the evidence he should have the first time. Jankowski brought a handwriting expert, Mark Songer, who testified the endorsement was not by Jankowski. The judge ruled for the Trustee. Due to a technicality as to what the Trustee needed to prove, the Tenth Circuit reversed.

COMMENTARY: It seems to me the dissenting opinion was correct, that Jankowski got away with a big one.

486. *U.S. v Lee*, 401 F. App'x 336, conviction and sentence affirmed (10th Cir. 2010); denying certificate of appealability for denial of *habeas corpus*, No. 14-8055 (10 Cir. 2015)

Defendant claimed vindictive or selective prosecution and bias since one juror realized he had worked with the prosecutor's handwriting expert only while the expert was testifying. For various reasons there was no merit in either claim of error.

COMMENTARY: The way things are described, I think there is no way an attorney, who is deprived of the kind of knowledge angels enjoy, could have ever latched onto these two alleged instances of inadequate representation.

11. Eleventh Circuit.

1995

487. *U.S. v Frost, et al.*, 61 F.3d 1518 (11 Cir. 1995)

At pages 1527-1528: "Appellant Frost asserts a second ground in support of his motion for a new trial. Subsequent to the trial of this case, Frost's attorneys established that Curtis McCollum, a Warner Robins minister, had written the blackmail note involved in this case. McCollum entered a guilty plea to the offense of misprision of a felony and stated under oath that he had written the note at the urging of Appellant Martin. Appellant Frost asserts that, at trial, significant emphasis was placed on the fact that in the blackmail note, the word 'council' had been misspelled as 'counsel' and that the evidence established that Frost was the only person of the [sic] all those whose handwriting exemplars had been taken who had misspelled that word. Because it was later conclusively established that McCollum had written the note, Frost argues, he is entitled to a new trial.

"We agree with the district court that the evidence that McCollum wrote the note does not entitle Frost to a new trial. There was no evidence presented or argument made by the government connecting Frost to the actual writing of the note. The government's handwriting expert stated that he could not render an opinion as to who had written the note, and Frost's own handwriting expert testified that Frost had not written the note. The exemplars were offered by Martin's attorney and admitted without objection by Frost; no mention of Frost's misspelling of the word 'council' was made to the jury. We find that this evidence was not material to Frost's guilt, and was not likely to result in Frost's acquittal."

COMMENTARY: One cannot clutch at straws without first running after them. However, even the Scarecrow in the Wizard of Oz never thought in terms of straws though he necessarily often thought about straws, being stuffed with them. Nor did he chase after straws, urging his friends to do so only after the winged monkeys had unstuffed him and scattered them around.

1996

488. *U.S. v Taylor*, 88 F.3d 938, 1996 U.S. App. LEXIS 18140, 10 Fla. L. Weekly Fed. C 180 (11 Cir 1996)

Conviction and sentence for sending threatening communications were affirmed in a case growing out of stalking of long standing, 20 years, and for which defendant had previously been convicted.

Refusal to comply with subpoena for handwriting exemplars and then disguising them when finally complying supported sentence enhancement. He freely admitted that he had written cards and letters to the victims, amounting to some 1,000 items, but this was not sufficient compliance with need for exemplars because he did not admit to writing the cards in question. The government expert finally used the signature on the fingerprint card taken when Taylor was arrested.

COMMENTARY: A case of routine admissibility, but not, hopefully, was it a routine case of competence. Why not use the more or less 1,000 admittedly genuine writings to the same folks as exemplars, unless one is so unskilled at comparing handwritings that only precisely similar letters, words and phrasing will do?

1997

489. *U.S. v Brazel*, and related cases, 102 F.3d 1120, 1997 U.S. App. LEXIS 85, 46 Fed. R. Evid. Serv. (Callaghan) 240, 10 Fla. L. Weekly Fed. C 621 (11 Cir 1997); *certiorari* denied, in *Brazel v U.S.*, 522 U.S. 822, 118 S. Ct. 78, 118 S. Ct. 79, 1997 U.S. LEXIS 4782 (US 1997)

One defendant had given a first exemplar and refused a second after a court order. The judge instructed that the refusal could be taken as consciousness of guilt, while the handwriting expert explained why the first exemplar was inadequate. The testimony was not objected to, and the instruction was not error.

COMMENTARY: I believe a defendant should have right to an expert or legal professional present at the taking of handwriting exemplars so that a complete record could be made of the procedure. Done properly it is a complex and very technical matter. For the most essential considerations see my monograph filed open access at <https://Archive.org>, "Exemplars: Genuine Samples for Comparison with Questioned Writings and Documents."

1999

490. *U.S. v Paul*, D.C. Docket No. 1:97-CR-115-1-GET (N.D. GA 1997); affirmed, 1999 U.S. App. LEXIS 9050; 51 Fed R Evid Serv (Callaghan) 1462; 12 Fla L Weekly Fed (832); 175 F.3d 906 (11 Cir 1999)

Denbeaux, the critic of handwriting expertise, was disqualified, and Ziegler, the

handwriting expert, was admitted. Denbeaux did not possess an acceptable degree of knowledge, would not have assisted jury, nor was he a qualified expert. He had done nothing beyond his *Exorcism* article.

COMMENTARY: Finally, a court required some useful, valid expertise from the anti-expert expert. In a CV from around 1985, Ziegler listed as part of his qualifications the teaching of “Eight Basic Steps of Graphoanalysis.”

2000

491. *U.S. v Smith and Tyree*, 231 F.3d 800, 2000 U.S. App. LEXIS 26814, 55 Fed. R. Evid. Serv. (Callaghan) 1267, 14 Fla. L. Weekly Fed. C 117 (11 Cir 2000); *certiorari* denied, 2001 U.S. LEXIS 3591 (US 2001)

Convictions for violation of absentee voter laws were affirmed except for one of 12 counts for Tyree. Larry Nelson, defendants’ handwriting expert, testified that someone other than the voter or defendants signed some absentee ballots. “But none of those voters testified that they had not voted the ballot that was cast in their name or authorized someone else to do so.” The government handwriting expert testified Tyree signed one voter’s name, which cannot be done legally in Alabama even with permission.

A larger issue in the case was that defendants were selectively prosecuted because they were Black and had a particular local political affiliation. With much reasoning, the appeal opinion explains why the fact that others mainly escaped prosecution was not prejudicial, since the others were “not similarly situated” in one way or another.

COMMENTARY: I could not argue with someone who suggests that one’s native complexion was at least one of the dissimilar situations.

2001

492. *U.S. v Kirby*, 1:01-CR-642, U.S. D.C., Georgia (11 Cir. 2001)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. I was not able to obtain a copy of the case report.

2002

493. *U.S. v Patti and Guy*, (11 Cir. 2002)

COMMENTARY: SWGDOC lists this as a case where handwriting identification was admitted unconditionally. An appeal by Frank M. Patti, Sr., is reported at 337 F.3d 1317 (11 Cir. 2003), but in that case report there is no mention of testimony from a document examiner.

494. *U.S. v Young*, 287 F.3d 1352 (11 Cir. 2002)

SWGDOC lists this as a case where handwriting identification was received

unconditionally. Regarding the several claims of error on appeal, including admission of false checks into evidence. Footnote 2 says: “We discuss only Young's first issue regarding his right to proceed *pro se*. Because we find no merit to Young's remaining issues, we affirm the district court's disposition of those issues without further discussion. See 11TH CIR. R. 36-1.”

COMMENTARY: Apparently there was no challenge to the admissibility of the expert, only the checks.

2003

495. *U.S. v Morejon*, Case No. 99-717-CR-Seitz (11 Cir. 2003)

COMMENTARY: SWGDOC lists it as a case where handwriting identification was admitted unconditionally. I have not been able to obtain a copy of the case report.

496. *U.S. v Smart*, (11 Cir. 2003)

COMMENTARY: A list from SWGDOC says handwriting identification was admitted unconditionally. I have not obtained a copy of the report. The full name is Bobby R. Smart.

2004

497. *U.S. v Frazier*, 11th Cir., No. 01-14680, 2/26/03; 72 Criminal Law Reporter, 548-9 (March 19, 2003)

The final appeal decision was in 2004 and is discussed last.

The Criminal Law Reporter said that the Trial Court ruled that a defense expert could testify to the absence of physical evidence tied to defendant but “would not be allowed to draw any inferences based on the absence of evidence supporting the allegations of sexual assault.” Then later: “Qualification of an expert does not depend on a scientific background, the majority stressed.... [T]he Supreme Court extended *Daubert*'s application from ‘scientific testimony’ to ‘all expert testimony’ so that science is no longer the *sine qua non* of analysis under *Daubert*. This makes sense, the majority noted, in view of the disjunctive language of Rule 702.”

Experts on sexual assault evidence relied for the most part on their experience. Handwriting expertise is referred to as one example how experience contributes to reliability of an opinion.

COMMENTARY: In a sexual assault case, the strict interpretation of *Daubert* robs the defense of the testimony of a critical expert witness. Fortunately, the Court of Appeals reversed and remanded by putting the kibosh on the very incorrect view that the anti-expert experts take. Those among us who are no more than skilled technicians would thus be admissible under *Daubert*, while those of us who offer sound scientific evidence would enjoy a greater reliability. Cases reviewed herein illustrate both kinds of

handwriting expertise are alive and well. But we must all take responsibility to defend clients and courts against those whose opinions are subjective and, therefore, primarily accommodating to the client.

However, this shows the danger of taking Internet documents on face value, since the complete citation as known so far is:

U.S. v Frazier, judgment of trial court vacated and case remanded for new trial, 322 F.3d 1262, 2003 U.S. App. LEXIS 3511, 60 Fed. R. Evid. Serv. (Callaghan) 1120, 16 Fla. L. Weekly Fed. C 361 (11 Cir 2003); opinion vacated and hearing in blanc granted, 344 F.3d 1293, 2003 U.S. App. LEXIS 18980, 16 Fla. L. Weekly Fed. C 1086 (11 Cir 2003); affirming judgment of trial court, 387 F.3d 1244, 2004 U.S. App. LEXIS 21503, 65 Fed. R. Evid. Serv. (Callaghan) 675, 17 Fla. L. Weekly Fed. C 1132 (11 Cir 2004) 2004 U.S. App. LEXIS 21503:

In 387 F.3d 1244, which gives thorough report on the *Daubert* hearing, defense expert could give no scientific backing for opinion of frequency that hair or bodily fluids are left by perpetrator in rape cases. Besides the defense expert, FBI experts were called by defense to show no transfer happened, and they were called as experts on prosecution rebuttal to show low frequency of such evidence in rape cases. They could offer no scientific backing either, but that did not curtail their testimony as it did the defense expert's. Since defendant's conviction was partly based on the idea that lack of physical evidence of rape made no difference, while his defense was that such lack of evidence disproved the fact of rape, the case is excellent for study of how *Daubert* factors are played with to support both sides of the balance, even by the justices of the Court of Appeals.

498. *U.S. v Lecroy*, Criminal Indictment No. 2:02-CR-038 (11 Cir. 2004)

COMMENTARY: A list from SWGDOC gives this case as one in which handwriting identification was received unconditionally. I did not obtain a copy of the case report covering expert handwriting testimony, though 441 F.3d 914 (11 Cir. 2006) for the same individual, William Emmett Lecroy, does not mention an issue regarding handwriting. As a number of these defendants do, he appears as the subject of later prosecutions.

499. *U.S. v Pirchesky*, Case No. 01-608-CR-SEITZ (11 Cir. 2004)

COMMENTARY: A list from SWGDOC says handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

2005

500. *Aetna Life Insurance Company v Richardson*, 140 Fed. Appx. 853; 2005 U.S. App. LEXIS 14735 (11 Cir 2005)

"The record demonstrates that the district court carefully weighed the evidence and

found that the expert testimony of Mr. Shiver was more credible than the evidence offered in opposition thereto.”

COMMENTARY: The quote given is the entire statement as to the expert evidence.

2006

501. *U.S. v Campbell*, 2006 US Dist LEXIS 7442, Civil Action No. 1:04-CV-0424-RWS (11 Cir. 2006)

COMMENTARY: In a list from SWGDOC this is given as a case where a *Daubert* motion was denied. I have not obtained a copy of the decision. For the same defendant a later appeal decision not mentioning any issue under *Daubert* is “491 F.3d 1306 (2007). *UNITED STATES of America, Plaintiff-Appellee, v. William C. CAMPBELL, Defendant-Appellant*. No. 06-13548. United States Court of Appeals, Eleventh Circuit. July 13, 2007.”

Professor Risinger discusses this case and gives this cite: 2006 WL 346446 (N.D. Ga. Feb. 13, 2006).

502. *U.S. v Fashola*, Crim. No. 1:04-CR-372-JEC, NDGA (11 Cir. 2006)

COMMENTARY: A list from SWGDOC states handwriting identification was admitted unconditionally. I have not obtained a copy of the case report.

2008

503. *U.S. v Marti*, 294 Fed. Appx. 439, 2008 U.S. App. LEXIS 20007 (11 Cir. 2008); denial of motion for new trial, *U.S. v Marti*, 2008 U.S. Dist. LEXIS 35482 (S.D. Fla., Apr. 30, 2008); affirmed, 2009 U.S. App. LEXIS 5069 (11 Cir. 2009)

“Danielle Seiger, an FBI forensic document examiner, examined 401 documents that were either prescription forms or documents from patient files and compared the writing on them to Marti’s known signature. Seiger identified some of the signatures on patient charts as Marti’s authentic signature. However, she found that the majority of the documents contained ‘simulated signatures,’ which a layperson would refer to as ‘forgeries.’ Specifically, she concluded that the signatures [*8] on each of the prescriptions that form the basis of the substantive counts were either simulations or ‘not comparable to the known signatures of Dr. Marti.’ Seiger testified that many of the simulations appeared well-practiced. Based on this testimony, the government argues that at least some of them were ‘authorized simulations,’ meaning Marti authorized someone else to sign his name on the documents. Seiger did not attempt to determine whether documents had been altered after Marti signed them.”

COMMENTARY: This is an admirable condensation of expert testimony. Experienced document examiners can recognize the understated hours of labor and quality work. The prosecutor’s logic is another matter. If Marti signed the documents, he is guilty.

On the other hand, if he did not sign them, he is guilty.

2009

504. *Solorzano, et al., v U.S. Attorney General*, 304 Fed. Appx. 850, 2009 U.S. App. LEXIS 109 (11 Cir. 2009)

Donna Eisenberg, a forensic document examiner for the Department of Homeland Security, testified. She could not offer an opinion as to whether certain letters were authentic. “However, she was suspicious of the October 2001 letter because the envelope bore a postal cancellation date of 28 July 2000, predating the letter within it by over a year. *Id.* at 70. She made no finding as to whether the postal cancellation stamp was authentic, but ‘took it at face value.’ *Id.* On cross-examination, she testified that she could not authenticate [*7] the Gaula reports and had no experience with Gaula documents. *Id.* at 73.”

COMMENTARY: Ms. Eisenberg was obliged to give her best evidence when called to testify. The report shows a candid statement of the limitations she labored under, which speaks well for her integrity.

2010

505. *Zou v U.S. Attorney General*, No. 09-10716. (US Ct. App. 11 Cir. 2010)

Elaine Wooton, a forensic document examiner with the Department of Homeland Security, issued a report that some documents submitted by Zou were forgeries while others were suspect. Zou asked the court for a subpoena to have Wooton testify so she could be cross-examined, but the Government attorneys said they would produce her so that a subpoena was unnecessary. They promised twice then admitted they had never even talked to her about testifying. Nevertheless, the court credited her report over the testimony of Larry Ziegler, a former government forensic document examiner. Ziegler had testified that some of Zou’s documents were genuine while others could not be determined whether they were or not. The Court of Appeal granted Zou an entirely new trial because of false promises by government attorneys regarding the production of Wooton which violated his constitutional right to a fair hearing.

COMMENTARY: It is refreshing to see no excuses made for government attorneys misrepresenting things and/or deceiving the court and the opposing party. As I express elsewhere herein, when any violation of the rules by government attorneys occurs, the court most often excuses it since the argument by the government that it had no effect on the outcome is accepted. Of course, if it had no effect on the outcome, the violation would not have been so cleverly and deliberately executed by the same government attorneys who are pronounced to be cleansed of all guile. I submit that every violation of rule, particularly of the Constitution, that a government attorney makes should have an automatic and punitive effect for the attorney committing it and the agency permitting

such practices, usually the Office of the Attorney General.

2014

506. *Madura, et al., v BAC Home Loans Servicing, et al.*, No. 13-13953 (11 Cir. 2014)

Thomas Vastrick's reports were stricken that gave his opinion that Plaintiff's initials and signatures were forged on loan papers. "Although Vastrick likely was qualified to testify competently about document forgery and alteration, based upon the information in his curriculum vitae, no record evidence sets forth the specific methodology Vastrick used to make his findings or stated whether his methods were sufficiently reliable." It was not abuse of discretion not to hold a *Daubert* hearing. Defendant's motion for summary judgement was properly granted.

COMMENTARY: The decision gives three factors: Is the expert qualified, is the expert's methodology reliable, and will the testimony be helpful to the finder of facts. The methodology was not stated nor was it said to be reliable. Vastrick would not have been permitted to testify at trial. I suggest overdo the report and explicitly itemize and cover every criterion in *Daubert* and every provision in the rules. The curriculum vitae would not have the methodology stated, since that would go into the report and could alter with the tasks the expert performed. One wonders if the Defendants got away with a clever contention that the CV had to state the methodology used while the report may have described it.

507. *U.S. v Hoang*, No. 13-11958 (11 Cir. 2014)

"Hoang presented his defense to the jury through eliciting testimony that the bank was unaware who signed the checks drawn on Hoang's account; a document examiner could not determine whether Hoang signed the checks that were drawn on insufficient funds; and a handwriting expert was 'virtually certain or almost certain' that Hoang did not sign the checks." His conviction of and sentence for six crimes involving bad checks was affirmed.

COMMENTARY: This is a case in which one can enjoy speculating why the handwriting expert testimony did not carry the day. It was not necessary to prove who wrote the bad checks, only that Defendant knowingly negotiated and benefitted from them. In an older case, *People v Gayle*, 202 Cal. 159, 259 P. 750, 1927 Cal. LEXIS 327 (CA 1927), the expert was not sure who wrote forged contracts in a real estate deal. By convicting Gayle, the jury said it knew without a doubt who had, which was legitimate since the jury had the right to be more certain than the expert. A spoilsport would ruin the fun by going directly to the key point: There is a lot of other evidence that can prove the matter beyond a reasonable doubt, however doubtful experts might be when rightly limited to their little portion of the vast field of organized science, which itself is a very limited little portion of all of human life, however voracious it can become.

2015

508. *U.S. v Dale*, No. 14-10733 (11 Cir. 2015)

“On appeal, Dale argues that the district court erred in admitting at trial the testimony of a handwriting expert, Jason Miller, and a fingerprint expert, James Snidauf.” Both were properly found qualified, helpful and reliable.

COMMENTARY: More discussion is given to Miller because it seemed that his qualifications were challenged but not Snidauf’s. The discussion for Miller ends with: “In sum, because Miller was qualified to testify, handwriting analysis is a scientifically reliable methodology, and Miller’s testimony was helpful to the jury, the court did not abuse its discretion in admitting Miller’s testimony.” That is not to say that every witness claiming to be a handwriting expert employs a method that is guaranteed to be both scientific and reliable. A French saying advises do not buy a fish without looking at its gills. Do so especially if it looks fishy even for a fish or smells a bit too much.

12. Twelfth Circuit.

I have not yet found a decision on handwriting expertise from the Twelfth Circuit.

13. District of Columbia Circuit.

1997

509. *U.S. v Akhtar*, 1997 U.S. App. LEXIS 34871 (Cir DC 1997)

“Appellant also asserts that he suffered unfair prejudice when the District [*3] Court allowed eccentrically written notes, which were allegedly penned by appellant and were found in appellant’s briefcase at the time of his arrest, to go back with the jury during deliberations. These notes were used by the government’s handwriting expert to identify appellant’s handwriting as the same as the writing on the forged check. We do not believe that the District Court abused its discretion....”

COMMENTARY:

1998

510. *U.S. v Ortiz*, 317 US App. DC 262, 82 F.3d 1066, 1996 U.S. App. LEXIS 9931 (Cir DC 1996); affirmed, 136 F.3d 161, 329 U.S. App.D.C. 18 (Cir. DC 1998)
82 F.3d 1066:

“Ortiz presented testimony from his priest, his employer, his wife, and family friends to show that he was working, as his April work time cards showed, on the dates of the drug transactions. In addition, he presented two expert witnesses. A foreign language interpreter opined, based on comparing Ortiz’ English proficiency with that of the speaker

on the tape recording of the April 10th tape conversation, that ‘it is probably not Mr. [*5] Ortiz who is on [the] tape.’ A forensic document examiner opined that Ortiz’ left-handed handwriting samples and the written pager number given to Valentine, which contained evidence of a right-handed writer, were ‘entirely different.’ n6"

Footnote 6: “In rebuttal the government presented the testimony of two co-defendants, who had entered pleas, that they had delivered drugs to Ortiz, and that one co-defendant had no information that Ortiz was working at the relevant times.”

136 F.3d 161:

Footnote 11: “A foreign language interpreter testified that Ortiz probably was not the person whose voice was recorded on the telephone tapes because Ortiz’s English was not good enough. A forensic document examiner testified that Ortiz’s writing samples did not match ‘Carlos’s’ writing style.” “Carlos” was an alias that Ortiz used.

COMMENTARY: A routine case of admissibility wherein once more it seems that Government purchases testimony from criminals by offering a good deal.

1999

511. *Mitchell v District of Columbia*, 741 A. 2d 1049 (DC Ct. App. 1999)

“Cynthia White, a handwriting expert, testified that one person signed all twenty of the names of registered voters appearing on the petition signed by Mitchell.”

COMMENTARY: And that was that.

2001

512. *U.S. v Nowlin* (DC Cir. 2001)

COMMENTARY: This is from a list circulated by SWGDOC. The Court of Appeals criticized the Government for not having engaged the services of a handwriting expert, and thus this case is supportive of the proposition that Federal Courts of Appeal consider the expertise itself as admissible under *Daubert*.

2002

513. *U.S. v Weaver*, 350 US Ap DC 121, 281 F.3d 228, 2002 U.S. App. LEXIS 2886 (Cir DC 2002)

COMMENTARY: Conviction for misappropriation of postal funds in which “a handwriting expert testified that Weaver signed or marked the deposit slips for many of the checks corresponding to ledger gaps....”

2003

514. *U.S. v Ayeni*, 245 FS2 145, 2003 US Dist LEXIS 2611 (D DC 2003); reversed and remanded, 374 F.3d 1313, 2004 U.S. App. LEXIS 14907 (Cir DC 2003)

After first trial on charges of “committing and conspiring to commit fraud and theft from programs receiving federal funds” ended in hung jury, at second trial, among other witnesses, Government presented “a handwriting expert who compared signatures on the vouchers with Robinson’s and Ayeni’s signatures.” During deliberations the jury sent two questions out regarding the evidence about the signatures. The Judge, over defense objections, permitted supplemental arguments. That was the grounds for reversal and remand.

The prosecutor during the supplemental argument said the expert could not be certain because some signatures had been made in an automobile, a thing never mentioned during trial, even by the expert. The concurring opinion states that on direct examination the expert, Ms. King, was certain Ayeni had made the signatures in question but on cross-examination conceded what in effect was reasonable doubt.

COMMENTARY: It seems this is a case that illustrates that, although the theory and method of expert evidence might be reliable enough to be admissible, the opinion itself can turn out to be insufficiently reliable. The lesson is that before trial the expert must cover all weak points in the opinion.

2005

515. *Breezevale Limited v Dickinson, et al.*, 879 A.2d 957, 2005 D.C. App. LEXIS 412 (D.C. Cir. 2005)

“The court also based its finding on a detailed examination of the documents themselves, which were admitted into evidence. A document dated February 25, 1987, was computer generated, even though by Jaoude’s own testimony, Breezevale did not yet own computers at that [*13] point. Although Breezevale claimed that Ms. Paul fabricated this particular document on her own initiative, this explanation was belied by Jaoude’s handwritten notations on the document. A computer evidence expert testified that both this document and a similar one with Jaoude’s handwriting on it were produced on Ms. Paul’s computer with a last access date of February 21, 1991, thus corroborating Ms. Paul’s testimony that the documents were created at that time. Other evidence of forgery includes the fact that two documents (each with Jaoude’s signature) were typed on a letterhead which did not exist in 1987. n4 Although Jaoude denied having signed these documents, the court credited the testimony of a handwriting expert who concluded with ‘no reservation whatsoever’ that it was indeed Jaoude’s signature on the documents. In short, the court found that the evidence lead to the ‘inescapable conclusion’ that the documents at issue were forged, and this conclusion is supported by substantial evidence in the record.”

Footnote 4 reads: “The letterhead contained the name and address of ‘Breezevale Incorporated, New Jersey,’ a subsidiary that had not yet been formed.”

COMMENTARY: It is rare that a case report packs so much documentary evidence in such a short space. I believe we would do well to collect case reports that consider such stock-in-trade items as documents dated before the existence of the letterhead they bear. When we offer such evidence, the attorney can be armed with legal precedents if an objection should be offered.

2006

516. *Nichols v First Union National Bank and Lang*, 905 A.2d 268 (DC Ct. App. 2006)

“Appellant contends that the trial court erred in entering orders prohibiting him and his expert witness (Katherine Koppenhaver) from testifying, and, as a result, in granting summary judgment to appellees. We disagree.”

The expert was prohibited as sanction for violations of court orders and discovery by Plaintiff’s counsel and Plaintiff prohibited for his own violations.

COMMENTARY: This is another warning of the dangers of only considering the final ruling but not the circumstances of it nor the reasons for it. The client’s failure to abide by the rules cannot be credited against his experts who become victims of his negligence.

517. *U.S. v Alston-Graves*, 435 F.3d 331, 369 U.S. App. D.C. 219, 2006 U.S. App. LEXIS 2001 (D.C. Cir. 2006)

A handwriting examiner testified that “in all likelihood” defendant had not prepared signatures in question, but he could not rule out her use of a disguised handwriting.

COMMENTARY: It would seem that “in all likelihood” would rule out all alternative likelihoods such as defendant signing with a disguise. Even more in all likelihood, such terminological mishmash masks ineptitude.

2008

518. *In re Loraine Boley Ingersoll Trust. Ingersoll, et al., v Ingersoll*, 950 A.2d 672, 2008 D.C. App. LEXIS 271 (DC Cir. 2008)

COMMENTARY: In a very long decision, the sole mention of handwriting expertise is in Footnote 14: “John Hargett, an expert witness and forensic document examiner, testified that the [*48] November 10, 1999 note ‘is the normal and natural writing of [Mrs.] Ingersoll.’”

2010

519. *Riddick v US*, No. 07-CF-875 (DC Cir. 2010)

Riddick's conviction for second degree murder of his girlfriend and other offenses is affirmed. One issue was whether denying admission to a handwritten note was error.

"During a search of Barrera's bedroom, police found, in the top drawer of a corner cabinet, a sheet of yellow lined paper on which the following was handwritten: 'My life is going down the drain more and more George is pulling away from me more now[.]' [9] The government had lost the original sheet of paper at some point before trial, but had preserved a copy, which the defense sought to introduce into evidence. Although acknowledging that the handwriting on the paper could not be authenticated as that of Barrera (since a handwriting expert would need the original to be able to opine on the issue), the defense argued that the writing was evidence of Barrera's state of mind and was relevant because it suggested appellant 'was the one who was leaving and that [Barrera] was upset about that and that, therefore, she might take steps to stop him' by pulling a gun on him."

There is extended discussion of arguments pro and con whether the ruling not to admit the note was abuse of discretion, with the defense position eventually losing out. The discussion gives one a good glimpse of legal argument and judicial thinking processes.

COMMENTARY: First, the prosecution should not once more have had the benefit of losing primary evidence, which it does in this case. Second, a copy may well be authenticated, though not definitely or beyond a reasonable doubt. However, that would not be the defense's burden of proof since it merely need raise a reasonable doubt, and copies of handwritten material are often authenticated to a reasonable certainty, which, I submit as a layperson regarding legal questions, in this case would support a reasonable doubt to the defendant's benefit. Due to other considerations raised in the case report, the note would require other supporting evidence to establish a reasonable doubt. Nevertheless, when you need several keys to unlock a door you have to open, why agree to throw away one of them?

2012

520. *Pettus v U.S.*, 37 A. 3d 213 (DC: Court of Appeals 2012)

COMMENTARY: Please read the case report for it offers a neat summary of all such hearings and decisions. This commentary will be very editorial, offering repeated critique of repeated assertions from both sides, though I hope with more literary creativity than the repeated assertions ever offer.

Reading this case report will relieve you from reading a raft of others, since it gives all the standard arguments on either side for a challenge under *Frye*, along with several of the major big name witnesses to little intellectual contentions. For the Government, FBI

document examiner Hector Maldonado was trial expert, and Diana Harrison of the FBI was expert at the *in limine* hearing. She cited ASTM and SWGDOC in support of the admissibility of handwriting expertise. She described the method they used, which simply yearns for critical analysis. Among other questionably reliable practices, as usual one expert does the work and another in the same lab “peer reviews” it by using the exact same method with the exact same steps and making the exact same observations. Does anyone think such scientific mimicry will come up with other than the exact same result?

Bolstering things for the Government are the allegedly independent researchers, Kam via published studies and Srihari in person. Why does not the opposing party in these hearings present the intimate, mutually rewarding, long standing interrelations between academicians and their forensic clientele? The researchers are kept because they produce the needed results that give an aura of reliability to the unchanging practices of governmental agencies with money to reward desired results with more contracts. If all the moneys came from an entirely independent funder with no connections to the forensic discipline under investigation, and if the funds were put out to blind bidding, one’s skepticism might be put to rest.

The lone defense witness at the hearing was Mark Denbeaux, who later was dubbed a non-scientist, and whose opinions were such the usual repetitive musings that I submit he should testify by a one-time video recording to save parties all much time and money. The Defense enlisted the assistance of the NRC Report on the forensic sciences, but all these arguments were set aside with more credit to the report than it deserved.

14. Federal Circuit.

2000

521. *Ajinomoto Co, Inc., v Archer-Daniels-Midland Co.*, 228 F.3d 1338, 2000 U.S. App. LEXIS 24767, 56 USPQ2 (BNA) 1332 (Fed Cir 2000); amended, rehearing denied, 2000 U.S. App. LEXIS 31898 (Fed Cir 2000); *certiorari* denied, 2001 US LEXIS 3599 (US 2001)

Plaintiff prevailed in suit of infringement of patent in use of genetically modified bacteria, and Court of Appeals affirmed with modification of damages. ADM argued the patent invalid since the application was not properly signed. At page [*12]: “ADM’s handwriting expert compared the fourteen signatures on the 1996 declaration with the fourteen signatures on the declaration filed in 1980 and gave the opinion that six or possibly seven of the signatures were not written by the same person. ADM’s expert conceded that the signatures were difficult to compare since those on the 1996 Russian document were written in the Russian (Cyrillic) script, whereas those on the 1980 English document were written in English script.”

COMMENTARY: This offers an example of comparison between different scripts. Too many handwriting examiners confuse “difficult” with “impossible” and “impossible

for me” with “absolutely impossible.” Having said that, a gap of sixteen years requires exemplars contemporaneous with both the 1980 and 1996 signatures. Was either set comprised of all genuine signatures? Had any signatory significantly altered the writing style after sixteen years?

15. Military Courts of Appeal.

1994

522. *U.S. v Riddle*, 41 MJ 673 (AF Ct Cr Ap 1994)

The court states that use of a handwriting expert is not necessary, but it is the mark of solid case preparation.

COMMENTARY: If the Court had not considered the expertise reliable, it could not have reasonably said it is a mark of solid case preparation.

1997

523. *U.S. v Ruth*, 42 MJ 730, 1995 WL 450976 (Army Ct Cr Ap 1995); affirmed on other grounds, 46 MJ 1 (CAAF 1997)

Handwriting expertise is technical rather than scientific, nor is it novel. The appointment of Denbeaux as defense expert was denied because he was a law professor and not an examiner of documents nor did he have knowledge of the case at hand. Defense counsel was told he could cross-examine S. A. Horton, the handwriting expert, with Denbeaux’s article, but he never did.

COMMENTARY: Denbeaux and his like have turned trials, at least criminal cases involving techniques of identification, into findings about theoretical musings rather than findings of fact. They did so by creating a new case law at the trial level which admits “experts” lacking all expert knowledge of the identification issues in the case at bar. It used to be that one had to know relevant facts, now one merely need assert that one’s speculative theorizing, devoid of all factual content, is relevant. At least the *Ruth* Court required case specific knowledge. Hopefully more and more courts will prefer reality over speculative musings.

2001

524. *U.S. v Elmore*, 56 MJ 533, 2001 CCA LEXIS 259 (US Nvy Mar Cps Ct/Cr Ap, NMCM 99 01013, 2001)

It was not abuse of discretion to deny motion *in limine* to exclude testimony of handwriting expert Marc Jaskolka, who described “handwriting analysis as a learned skill rather than a scientific process.” Reasoning in *Ruth* and *Starzecpyzel* cases was adopted to support admissibility of opinion both as to observations and opinion that defendant “may

have written” endorsements, numerals and initials on back of stolen postal money orders. “[W]e are convinced that, whether a rigorous *Daubert/Kumho Tire* analysis is employed, or an older, traditional scrutiny under Mil. R. Evid. 702 is used, expert testimony in the field of handwriting analysis is generally valid and reliable, and may properly be admitted in trials by court-martial.”

COMMENTARY: It is ironic that *Starzecpyzel*, the case standing preeminently for exclusion of opinions by handwriting experts, should be cited in support of admissibility of opinions in *Elmore*. The analysis given is quite extensive and in depth. Another source said that Jaskolka was certified by ABFDE.

2002

525. *U.S. v Pinson*, U.S. Court of Appeals for the Armed Forces, Crim App. No. 32963, June 19, 2002

Defendant claimed that handwriting exemplars seized and used in comparisons were privileged. All but two were ruled by trial judge as not privileged, and as to the remaining two, the military judge found “that to the extent P27 and P28 might at one time [have] been protected by M.R.E. 502, their contents have been fully disclosed in communications to others, including those communications in [Appellate Exhibit (App Ex)] XXV [Memorandum for Convening Authority (8 AF/CC) dated Mar. 18, 1996], App Ex XXVII [Congressional Complaint dated Nov. 16, 1996], and App Ex XXVIII [Memorandum for 85th Group Inspector General dated July 5, 1996]. Moreover, none of the material contained in P27 and P28 was susceptible to being used directly or indirectly against the accused on the charges in this case. Moreover, the questioned documents examiner testified that those items were not necessary for his conclusion, and disregarding them would not affect the certitude of his opinion. Finally, the court rules as a matter of law that mere comparison of the physical appearance of the accused’s lawfully seized handwriting is not -- in this case -- within the protection of the attorney client privilege.”

COMMENTARY: In this case the issue of privileged materials is considered. The examiner wisely developed an opinion that did not depend on the disputed exemplars.

2004

526. *U.S. v Roberts*, U.S. Court of Appeals for the Armed Forces, No. 34236, March 23, 2004

COMMENTARY: Defendant was convicted of altering, removing and making false public records. Two falsified versions of his performance record were uncovered. “Handwriting analyses showed that the signatures on both of the questioned EPRs had been traced.” Defendant’s fingerprint was found near one of the traced signatures. The major issue in the appeal opinion was that nondisclosure of the investigative file was harmless beyond a reasonable doubt due to the overwhelming evidence of guilt.

D. U.S. SUPREME COURT.

I have not found a decision by the U.S. Supreme Court addressing handwriting expertise post-*Daubert*. All cases reported as appealed to the Supreme Court are noted “*certiorari* denied.” One might infer that the ruling by the particular Court of Appeals upholding the admissibility of the expertise was acceptable to the Justices of the Supreme Court, otherwise they would have corrected the ruling. I do not know whether that is standard and acceptable legal reasoning, but it certainly would seem to be reasonable and logical to any rational, non-legal mentality. It seems to me at least that it would be an application of “*qui tacet consentire videtur*.”

II. STATE COURTS.

A. ALABAMA CASES.

1. Alabama Trial Courts.

I have no case reports for Alabama trial courts.

2. Alabama Courts of Appeal.

1993

527. Bunn v Bunn, 628 So. 2d 695 (AL Ct. Civ. App. 1993)

In a dispute over alimony in gross of \$40,000 the husband had the benefit of a handwriting expert while the wife had the benefit of the trial judge's decision affirmed on appeal.

COMMENTARY: There is no need to read the case report since it offers no lesson in expert evidence and no interesting marital spat.

1994

528. Clemons v Clemons, 656 So. 2d 831 (AL Ct. of Civ. App. 1994)

In a divorce action the wife used the testimony of document examiner Lamar Miller to support a motion. He testified that signatures on a copied document were authentic and gave no evidence of having been altered, manipulated or transferred.

"Brian Carney, a document examiner retained by the husband, testified that he had examined two papers said to be copies of the original 'receipt,' 'Plaintiff's Exhibit Two' *833 and 'Defendant's Exhibit Two.' Carney stated that 'Plaintiff's Exhibit Two,' the copy Miller had examined, was a 'less detailed copy, meaning a poorer quality copy for examination purposes' than was 'Defendant's Exhibit Two,' which he described as 'an earlier generation or better quality copy.' Carney testified that the results from an examination of the earlier generation copy would be more reliable.

"Unlike Miller, Carney had determined that the date on the copy designated 'Plaintiff's Exhibit Two' had been altered and that the signature on the copy designated 'Defendant's Exhibit Two' had been manipulated and transferred onto that document. Further, Carney testified that because 'Plaintiff's Exhibit Two' was of poor quality, he could not determine whether the signature on it had been manipulated. However, Carney concluded that even though it was highly probable that the signature on 'Defendant's Exhibit Two' was the 'genuine' signature of the husband, he did not know how the signature had come to be upon that document."

Since she could not prove what she needed to, the wife's motion was properly

denied.

COMMENTARY: “Unlike Miller....” What was ultimately unlike in the two expert testimonies was Carney’s thoroughness, beginning with determination of the limitations he labored under and how to make the best of the materials available. This is a fine lesson for all of us in proper work ethics.

1996

529. *First Bank of Childersburg v Florey*, 676 So.2d 324 (Ct. Civ. App. AL 1996)

Florey denied her signature on a deed. Her handwriting expert agreed with her, and the bank’s handwriting expert also agreed.

COMMENTARY: A case of routine admissibility but hopefully a routine honest opinion from each expert, though I suspect some will undoubtedly doubt that.

1999

530. *Ballard v State*, 767 So. 2d 1123, 1999 Ala. Crim. App. LEXIS 28 (AL Ct. Cr. App. 1999); *Ex parte Halycon Ballard*, writ of *certiorari* quashed as improvidently granted, 767 So. 2d 1142, 2000 Ala. LEXIS 122

Dr. Richard Roper testified that an exculpatory invoice was fabricated. The type was used later than dated, and the handwriting appeared “forced” or to be a tracing. However, defendant could not be eliminated as the author of the invoice. The prosecutor asked Roper if defendant could have retained Lamar Miller, who was more qualified than Roper, to examine the invoice and later argued she did not because she knew it was false. This argument was error, but harmless due to the overwhelming evidence of guilt.

The text in the Supreme Court decision is of the dissent which argues the prosecutor had committed reversible error in arguing consciousness of guilt from fact defendant had not had Miller examine the invoice.

COMMENTARY: This case illustrates that an inconclusive opinion might at times be helpful to the fact-finder. That defendant could not be eliminated, combined with fact only defendant could have benefitted by the false invoice, replied to defendant’s position that she had nothing to do with the invoice.

2009

531. *Guthery v Persall and Garden*, 2009 Ala. Civ. App. LEXIS 410 (Ala. Civ. App. 2009)

“MR. DUTTON: [*8] I would proffer evidence from Steven G. Drexler of Drexler Document Laboratory, Incorporated. He reviewed various handwriting samples of Mr. Woodrow Wilson Guthery also known as W. W. Guthery. He did extensive forensic research, again, verified an original and copies of Mr. Woodrow Wilson Guthery’s

signature provided by us. And his testimony clearly is that the deed dated August 5, 1996, executed by Mr. W. W. Guthery, the basis of this case, to Jean Persall and Donna Garden is a forgery, and we would -- in support of our proffer, I would just offer [the two deeds].’

“As the foregoing colloquy demonstrates, counsel for the sister based his motion in limine primarily on the proposition that the brother’s noncompliance with the circuit court’s scheduling order precluded the brother’s expert from testifying at trial, whereas the circuit court based its ruling on the proposition that forgery had not been pleaded in the brother’s complaint. Under either theory, Alabama law indicates that the circuit court’s granting the motion in limine was not reversible error.”

COMMENTARY: Neither theory for excluding the handwriting expert’s testimony is related to reliability.

2016

532. *Woods v State*, No. CR-10-0695 (AL Ct. Crim. App. 2016)

COMMENTARY: Testimony of Steven Drexler, a handwriting examiner, was received for the State.

3. Alabama Supreme Court.

1993

533. *Joyce West v Jeff West, a minor, By and Through his father and next friend, Earlis West*, 620 So.2d 640 (AL 1993)

After hearing testimony, the trial judge granted summary judgment to Jeff. It was reversed and remanded since the testimony of the handwriting expert to forgery did not dispose of the factual issue since the notary public testified to the contrary, and the evidence was to be interpreted favorably to the non-moving party for purposes of granting summary judgment.

COMMENTARY: The dispute had to be decided upon the merits since there was a genuine issue of fact.

1999

534. *Eubanks v Hale*, 752 So.2d 1113, 1999 Ala. LEXIS 306 (AL 1999)

A case of disputed results in sheriff’s election. Statute and rules of court say handwriting evidence by expert or witness familiar with person’s writing shall be permitted. Trial court apparently did not permit Dr. Richard Roper to testify because he said no when judge asked did he look at certain writings with a telescope, which Supreme Court took to have meant to be microscope. Since time was of the essence in resolving the dispute, Supreme Court did not remand but counted votes in accordance with what

Roper's opinion would have been if he had testified, and it did not change things due to other evidence.

COMMENTARY: I break my own rules by including this case since Dr. Roper was not permitted to give his testimony in chief. Apparently, he had been subjected to some *voir dire* since the trial judge did ask about the telescope. I include it as a caution to all of us that we verify why a proffered expert was not allowed to testify before using it against the expert or relating it to others in a way that might denigrate the expert.

535. *Ex parte Hunt; Hunt v State*, 744 So.2d 851 (AL 1999)

Hunt was convicted of forgery. The forged checks and requested exemplars were submitted to the forensic lab, and its report was used at trial.

"Laboratory examinations and comparisons revealed indications that the questioned entries on [check 14128] may have been written by the author of the Teresa L. Hunt handwriting standards. There are indications that the 'Jim Sak' maker's signature may not represent the natural handwriting of the writer.

"Comparisons of the endorsement on [check 14128] with the submitted standards were inconclusive. Examination of the handwriting characteristics comprising the endorsement revealed indications that this handwriting may not represent the natural handwriting of the writer."

The trial court denied a motion of acquittal, and the Court of Criminal Appeals affirmed. The Supreme Court of Alabama reversed and rendered a judgment of acquittal.

"'[E]vidence which merely raises a conjecture, surmise, speculation, or suspicion that accused is the guilty person *859 is not ... sufficiently corroborative of the testimony of an accomplice to warrant a conviction.' 23 C.J.S. *Criminal Law*, Section 812(5)(b). 'Staton v. State, 397 So.2d 227, 232 (Ala.Cr.App.1981).'"

COMMENTARY: Would that this admirable rule ruled more often.

2002

536. *Hayes, et al., v Apperson*, 826 So. 2d 798, 2002 Ala. LEXIS 38 (Ala. 2002)

COMMENTARY: A handwriting expert testified about the effort needed to imitate a sick person as shown by signature on a will.

2007

537. *Davis v Sterne, Agee and Leach, Inc., et al.*, 965 So. 2d 1076, 2007 Ala. LEXIS 18, 61 U.C.C. Rep. Serv. 2d (Callaghan) 803 (Ala. 2007)

In support of its motion for summary judgment, "Sterne Agee attached excerpts from the deposition testimony of Steven A. Slyter, Davis's expert witness on handwriting analysis, establishing that he believed an expert's assistance would be required to analyze Mr. Davis's signatures on the three COB forms to conclude that [*6] the signature on the

December 8, 2001, COB form was not that of Mr. Davis.

“In opposition to Sterne Agee’s motion for a summary judgment, Davis argued that §§ 7-8-115 did not protect Sterne Agee from liability because, she argued, Sterne Agee did not satisfy the statutory requirement that it was acting ‘at the direction of its customer or principal’ when it disbursed the proceeds of the IRA to the sons. In support of her argument, Davis presented evidence, in the form of the testimony of Slyter, that the signature on the December 2001 COB form was not that of Mr. Davis. She argued that a genuine issue of material fact was created as to whether the signature on the document was forged and whether Sterne Agee had breached its duty of care in disbursing the proceeds of the IRA. She also argued that Sterne Agee had presented no evidence to refute Slyter’s testimony that the signature on the December 2001 COB form was not Mr. Davis’s and that Daniel and Sterne Agee had breached the standard of care in servicing Mr. Davis’s IRA.”

COMMENTARY: It seems that during the deposition either Mr. Slyter did not give his opinion regarding the falsity of Mr. Davis’ signature or Sterne Agee was not paying attention.

2010

538. *Fluker v Wolff*, 46 So. 3d 942 (AL 2010)

This was an election dispute in which Wolff prevailed. Fluker’s motion to strike the testimony by Richard Roper, Wolff’s expert, was denied. Roper said that two signatures the law required an absentee voter must sign had not been written by the same person, and so the trial judge disallowed them. Fluker said the law required Roper to compare the signature to a proven genuine signature. However, Roper was not saying who did or did not write the two signatures, only that two different people wrote them. If he had said the same person wrote both, then he would need the genuine signature to identify the writer.

“Fluker’s counsel cross-examined Roper and objected to his testimony on the following grounds: ‘Your Honor, I would move to exclude the testimony of Mr. Roper on the ground that he did not observe and was not present when any of these people gave or made the signatures that he examined. He did not take any sample writings from any of these folks in the usual way that it is done. And he did not examine the original documents and that his testimony for that reason is speculative. [Wolff’s counsel] should be required to call the actual voters and take their testimony about whether or not their signature [is] on those two documents or not before any of them are denied the right of all citizens to cast a vote.’”

COMMENTARY: I include the quote in case it will help you defeat a similar challenge to your expert’s work. If Roper had been present when the signatures were written, he would then be a percipient, and not an expert, witness. If he had taken samples for his own use, he would have been in violation of the *post litem motam* rule. Examining copies does not make an opinion speculative as long as the expert relies on observation

and recording of those data in the original the copy would not have altered beyond reliability. I imagine the suggested new rule to bring in actual voters in a litigation over an election would be excessively and unreasonably burdensome.

2013

539. *Moultrie v Wall, et al.*, 143 So. 3d 128 (Ala. 2013)

Moultrie lost his appeal on being charged for Wall's attorney fees and fees for Dr. Richard Roper who testified Moultrie and not his brother, as he claimed, signed a sales agreement.

COMMENTARY: A reminder that, however rarely, fibbing in court can have its undesirable consequences.

2014

540. *Ex parte C.B. Grant, as administrator of the Estate of Phillip Frazier, deceased (In re: C.B. Grant, as administrator of the Estate of Phillip Frazier, deceased v Wiley Sanders Trucking Lines, Inc., et al.)*. No. 1131150 (AL 2014)

COMMENTARY: This is the entire discussion of the expert testimony: "The court took testimony from witnesses, including Davis, Grant, several of Frazier's family members, and a handwriting expert."

4. Alabama Court of Criminal Appeals.

1995

541. *Brown v State*, 630 So. 2d 481 (AL Ct. Crim App. 1993); conviction reinstated, 668 So. 2d 102 (AL Ct. Crim App. 1995); affirmed, *Ex Parte Brown*, 668 So. 2d 105 (AL 1995)

630 So. 2d 481:

Defendant had a letter from a friend he had killed asking him to do so due to an incurable illness. A handwriting expert confirmed deceased wrote the letter. The subsequent murder conviction was reversed and remanded for a new trial since Defendant's request to see an attorney was not honored. All statements he made after the request would have to be suppressed since his Fifth Amendment rights had been violated. 668 So. 2d 102 and 668 So. 2d 102:

The original conviction is reinstated.

COMMENTARY: *Ex Parte Brown* affirms the quizzical decision that Brown's explicit statement of his desire to talk to his friend the attorney was not an unambiguous statement to that effect, citations to supporting decisions from U.S. Supreme Court being provided.

1999

542. *McCart, et al., v State*, 765 So.2d 21 (AL Ct. Crim. App. 1999)

Convictions for conspiracy to traffic in narcotics and unlawful possession of drug paraphernalia were affirmed, with remand to impose statutory fines. At page 28 is the entire reference to handwriting expertise: “A handwriting-identification and document-examination expert testified that Peggy McCart did not make any of the drug-related entries on the calendar, but that she had entered other information on that calendar.”

COMMENTARY: The dissenting opinion is an excellent essay on the use of conspiracy charges and the building of inferences upon inferences to obtain otherwise unobtainable convictions. It reminds me of what an attorney said when Micky Cohen, I believe the gangster’s name was, was convicted of tax evasion. The attorney said anyone could be convicted of tax evasion. Who of us could defend ourselves against a charge of having deliberately paid a penny too little in income taxes ten or more years ago?

2000

543. *Evans v State*, 794 So. 2d 415, 2000 Ala. Crim. App. LEXIS 123 (Ala. Ct. Crim App. 2000)

Dr. Richard Roper testified extensively on what writing on voting documents was or was not written by Evans. Steven Drexler also testified for the prosecution.

COMMENTARY: No challenge to Dr. Roper’s testimony is indicated in the case report.

544. *West v State*, 793 S2 870, 2000 Ala. App. Crim. LEXIS (Ala. Crim. App. 2000)

[There is a complex series of further appeals from 2000-2003 going up to the U.S. Supreme Court and back, but none seems to address further the issue of document examination.]

In a complex chronology, the prosecution was held to have made timely disclosure to defense counsel of the documents in question and of the testing with its resulting report. Appellant/defendant West was convicted of murder, and letters he had written to his girlfriend had had portions obliterated by her before they were handed over to the prosecution. Steven Drexler, document examiner for the State, tried various techniques until he could make the writing under the obliterations clearly legible. They amounted to confessions by defendant. Alabama is on the *Frye* standard, and what Drexler did was not novel, being based on his knowledge of how to use magnification, lighting and chemicals, and the results were easily read by anyone. It seems that by the time trial ended the defense had had more time to test the documents, with assurance from the Court that the costs would be covered, yet they did not do so.

COMMENTARY: Some portions of questioned documents examination are strictly technical, as Drexler’s work was in this case. Other portions are what any ordinarily

sensible person would do or not do, while the finest is, some of us would maintain, truly scientific. This case shows that the Alabama Court of Criminal Appeals knows the difference when it sees it, and that is heartening to those of us doing practical work in pursuit of the facts. The reports indicate Drexler was a tenacious and resourceful investigator.

2007

545. *Egbuonu v State*, 993 So. 2d 35, 2007 Ala. Crim. App. LEXIS 90 (Ala. Ct. Crim. App. 2007)

COMMENTARY: A handwriting expert identified defendant's handwriting on credit card documents and a victim's checks. One of his two convictions for identity theft was overturned as an impermissible conviction.

546. *Woods v State*, 13 So. 3d 1 (AL Ct. Crim. App. 2007)

"While Woods was in jail, a deputy found hanging on the wall of his cell a drawing with the heading 'Nate \$ Nookie.' The drawing depicted two men shooting firearms near a street sign indicating the intersection of '18th Street and Ensley'; the drawing depicted three flaming skulls in the gun blast from the automatic weapon one of the men is shooting. The apartment where the officers were killed was on 18th Street in Ensley. When the deputy took the drawing, Woods protested, stating that the drawing was his and that he wanted it back. In addition, modified rap-style *30 song lyrics were taken from Woods's cell; the document included the statements, 'I'm a fuckin murderer' and 'I drop pigs like Kerry Spencer.' (State's Exhibit 337-A.) Steve Drexler, a document examiner, testified that based on his comparison of that document with a known sample of Woods's handwriting, he had determined that Woods was the person who wrote the words on the document seized from his cell."

COMMENTARY: One fears we have so deprived our young people of a moral, refined and cultured education in a very much changed interpretation of American freedom divorced from responsibility and respect for others, that we may self-destruct as a society. Hopefully not.

2008

547. *Williams v State*, 2008 Ala. Crim. App. LEXIS 141 (Ala. Crim. App. 2008)

Steven Drexler testified and stated various degrees of certitude that Williams did or did not write notes found at the scene of the crime. Terms used were, "indications," "could not say one way or the other," "probably," "strong indications," and "at least some of the notes were probably written by."

COMMENTARY: One could not say Drexler failed to adhere to ASTM standard on terminology just because he did not talk from a verbal straight jacket. However, it is

best to use precise, standardized terms to report precision in thought and work product.

2010

548. *Morris v State*, 60 So. 3d 326 (AL Ct. Crim App. 2010)

At page 343: “A handwriting specialist, Steven Drexler, testified for the State that Morris gave a number of writing samples for comparison purposes and that he could determine that the signature on the submitted court documents was that of Morris. He stated, however, that the handwriting in the text of the documents was inconclusive as to the author. Drexler testified that Morris had attempted to alter his handwriting in a number of the samples and that ‘[i]n particular [in] the extended writings where he was writing paragraph after paragraph after paragraph and maintaining that altered style, in my opinion it would take a great deal of mental fortitude to be able to maintain that style and not resort back to your normal habits.’ (Atkins hearing R. 157). Moreover, Drexler concluded that the reason he could not make a determination concerning the author of the text of the documents was because the ‘extended writing standard provided to me was not natural writing. And because I am comparing natural writing to unnatural writing, my opinion is I don't have an opinion, it's inconclusive.’”

COMMENTARY: Drexler might have been right about the disguise, but there is a good chance he was not. Even if right, he should have been made to prove it scientifically. How so? First, use collected exemplars, those preexisting and not part of the case. Thus there would be reliable comparison material against which to measure the requested samples taken from Morris. Second, there is a good chance Drexler merely relied on a theoretical lesson or one of many theoretical writings that claim certain traits prove disguise when the research only says they are associated with disguise. Some people regularly write that way, particularly unskilled or physically impaired folk. If Drexler did not take the requested exemplars, he must have handy a written record by the one taking them as to instructions given for each sample. In most of these cases where defendant is accused by the handwriting expert of disguising exemplars there is no mention of a record of instructions for each exemplar. Indeed, I cannot recall a single one, yet classic authors insisted such a record be kept. I have always suspected one law enforcement officer takes the exemplars and demands they be written in one or more disguises, then the expert examining them says they are no good because they are disguised. Finally, it is nearly physically and psychologically impossible to maintain disguise to such perfection as described here for as long as claimed. Either Morris was a one in a million with superb writing skills or Drexler was unaware he had to study the entire exemplars closely, particularly in the inconspicuous areas.

If you wonder how so many handwriting experts could make the same fundamental mistakes as I claim they might well be doing, consider that they all are trained according to the same two-year training standard by individuals trained the same way and who were accredited to teach by the same group of non-educators. Further, they insist none of them

can learn anything on one's own, what is called self-study. Thus they necessarily come out knowing less than the teacher and have no way to learn more than any of them know, thus they necessarily stay pretty much at the same dismal lack of knowledge and wisdom. People of my strain of document examiners know we can learn by self-study, so we have a tradition of assiduous self-study. Further, we know that everyone we meet knows something we do not, so we can learn even from those who claim they are doomed to the highest level of ignorance others can bring them to.

2014

549. *State v Gissendanner*, No. CR-09-0998 (Ct. Cr. App. AL 2014)

Trial court granted Gissendanner a new trial based on ineffective assistance of counsel for failure to retain a handwriting expert or alternatively to call his ex-wife in order to prove he did not write the forged check on the account of the murder victim. In reversing, the Court of Criminal Appeals in essence said it was a strategic decision and such is not subject to being ruled ineffective assistance of counsel. The report cites a number of precedents for such a ruling. One rule says ineffectiveness would be proved if shown no attorney would take the course of action trial counsel took.

Steven Drexler was the prosecution's handwriting expert at trial.

COMMENTARY: It is a very lengthy report and sets forth arguments pro and con along with a dissenting opinion. It is as if one were climbing Mt. Everest without any special equipment, giving the mountain all the advantages to start with. It seems to me there will be a blanket approval of any course of action once trial counsel asserts it was a strategic decision and the record shows a vigorous cross-examination of the prosecution expert, vigor making up for any off target aim or ineffectiveness. In this case trial counsel asserted his firm believe that handwriting expertise is chimerical, and he wanted to argue how unreliable it was, besides which he thought the writings on the forged check and Gissendanner's exemplars were clearly by two different people. Not believing in the expertise of experts, he firmly believed in his own inexpert expertise. Given that by 2004 or so when the original trial was held, the expertise itself was firmly established in court rulings as reliable, I submit that this attitude itself constituted ineffectiveness as a defense attorney.

Courts should reassess their approach to claims of strategic decision making. Instead of requiring of appeal attorneys the impossibility of proving no trial counsel would have done what this one did, look objectively at the very strategy itself and whether it was very smart in the particular circumstances of the case and not based on a bias inherently harmful to the client's legal situation. In this case I for one can see no smarts in defense counsel's alleged strategy.

B. ALASKA CASES.

1. *Alaska Trial Courts.*

I have no case reports for Alaska trial courts.

2. *Alaska Court of Appeal.*

I have no case reports for Alaska court of appeal.

3. *Alaska Supreme Court.*

2001

550. *Crittell v Bingo, et al.*, 36 P3 634 (AK 2001); affirming grant of enhanced attorney's fees, 83 P.3d 532 (AK 2004)

At page 650, ¶48-50, Richard Williams, ex-FBI handwriting and typewriting expert, is discussed. At page 651, ¶51, Edna Robertson's opinion on signature is discounted in favor of Williams'. But court rejects his opinion that since so few typewriters are used these days "certain general characteristics on one document justifies the conclusion the same machine was used on another."

COMMENTARY: On the typewriting it is excellent logic by court and poor logic by Williams, but a similarly poor logic is at times used in handwriting identification.

At page 651, ¶52 et seq., linguistics is discussed. At page 651, ¶55: "The linguists contradict each other and the court accepts as more convincing and believable the testimony of Professor McMenamin." NOTE: No other "linguist" is named.

2006

551. *Williams v Williams and Ballow*, 129 P.3d 428, 2006 Alas. LEXIS 2 (Ala. 2006)

COMMENTARY: A handwriting expert's testimony was received..

C. ARIZONA CASES.

1. *Arizona Trial Courts.*

I have no case reports for Arizona trial courts.

2. *Arizona Courts of Appeal.*

1996

552. *State v Riggs*, 186 Ariz. 573, 925 P.2d 714 (Ct. App. AZ 1996)

In a prosecution for forgery, Sharon Bloch, the records custodian for First Interstate Bank, was called to provide foundation for the introduction of bank documents. At page 576: “At trial, Bloch testified about her special knowledge of signature comparison acquired from her past experience working in a bank. The trial court did not abuse its discretion in allowing Bloch to testify that the signature on the checks did not match the defendant's handwriting on the signature card. Because defendant's defense was that he had permission to cash the checks in question, Bloch's opinion on his handwriting was inconsequential in any event.”

COMMENTARY: I write this immediately after writing the commentary for the 1997 case from Virginia Courts of Appeal, *Wileman v Commonwealth*. At least in Virginia and Arizona bankers can still testify as handwriting experts.

Defense counsel at trial asked Bloch for a handwriting opinion, as had the prosecutor. I imagine the appeal justices skipped that one as one good reason too many for finding no error in permitting her testimony as a handwriting expert. However, of possible value to a trial attorney, they give case law supporting her admissibility.

1997

553. *Reyes v Cuming*, 952 P.2d 329, 191 Ariz. 91 (AZ Ct. App. Div. 1, 1997)

Absentee ballots were counted in violation of applicable statute. At page 331: “We are not swayed by the Recorder's testimony that it would be difficult to retain handwriting experts to compare these signatures. While having a handwriting expert on hand for exceptional cases might be a sound practice, A.R.S. section 16-550(A) does not require any special expertise on the part of the person making the comparison. The statute merely requires that the comparison be made.” “The law is the law” seems to be the sum and substance of the opinion.

COMMENTARY: Though there was no expert testimony, the court notes that the law is that no particular expertise is required to do the job, a rather sobering and humbling note for us handwriting experts.

2007

554. *State v Coghill*, 169 P.3d 942 (Ct. App. AZ Div. 2, 2007); post-conviction relief denied, No. 2 CA-CR 2012-0308-PR (Ct. App. AZ Div. 2, 2012)

At page 946: “¶ 10 Alan Kreitl, a forensic document examiner with the Arizona Department of Public Safety, compared the handwriting on twenty-nine disks seized from Coghill's motor home, including all of the ‘KP’ disks, against a handwriting sample provided by Franks. Kreitl concluded that Franks had probably written ‘dirty’ on the disk bearing that label and probably had not labeled the ‘KP’ disks. Kreitl did not compare a sample of Coghill's writing to the labeled disks.”

COMMENTARY: Franks lived with Coghill and was impeached as a witness

against him. Convictions were reversed and remanded since adult pornography was introduced in a prosecution for child pornography.

2009

555. *Castro v Ballesteros-Suarez*, 213 P. 3d 197 (AZ Ct. App. 1st Div. 2009)

“¶¶ 44 Finally, Mrs. Suarez argues that the evidence was insufficient to establish that Decedent’s signature on the American Family change of beneficiary form was a forgery. Because the forgery was a finding of fact, it is binding unless clearly erroneous or unsupported by any credible evidence. See *Zaritsky*, 198 Ariz. at 601, ¶¶5, 12 P.3d at 1205. Our review of the record reveals that there is substantial evidence which supports the court’s factual determination.

“¶¶ 45 The court found that Decedent’s first name, Adolfo, was misspelled on the change of beneficiary form as ‘Aldolfo.’ The forensic document examiner, who reviewed the form with known handwriting samples, testified that she did not think Decedent would misspell his first name because he was illiterate and could only print his name. She testified that it was ‘highly probable’ that the Decedent did not sign the change of beneficiary form and there was a ‘high probability’ that the signature was a forgery. Her testimony, coupled with Ms. Castro’s testimony that she did not recognize the signature on the American Family form as her brother’s signature, was sufficient for the court to find that the form had been forged.

“¶¶ 46 Although Mrs. Suarez challenges the finding with four different arguments, there is substantial evidence to support the finding that the signature was a forgery. Accordingly, we will not substitute our judgment for the trial court’s judgment. As a result, the trial court did not err in determining that the Decedent did not sign the American Family change of beneficiary.”

COMMENTARY: Since this statement of the law seems to be the same for all appellate courts considering the same scenario, I quoted it at length. If it were not unwarranted skepticism, I would suspect that when appeal justices say, “We will not substitute our judgment for the trial court’s judgment,” they really think the trial court got it wrong but adhere to a course of action that requires less action and more judicial solidarity. But not being tinged with the least skepticism, I shall not even mention the possibility.

556. *State v Bacinski*, 2009 Ariz. App. LEXIS 283

“At trial, Bacinski maintained that another person had committed the offenses. Although the state’s expert witness testified there were some ‘indicators’ suggesting Bacinski could have written and signed various checks, he admitted that other checks could have been written by someone else. He testified further that some checks, such as the check that was the basis for one [*4] of the forgery charges, appeared to have been written by two different people. And, several other people lived or spent time in Bacinski’s

house at the time the various checks were cashed. One of those people was her brother, Stanley.”

It was error for the judge to have upheld the State’s motion to exclude defense evidence that Stanley had stolen and forged his wife’s checks, especially given the expert testimony. Consequently, convictions on four of six counts were reversed and remanded.

COMMENTARY: The unnamed expert certainly appears to be of a commendably independent and objective mind.

2011

557. *Amy B. v Gregory B.*, 1 CA-JV 10-0221. (AZ Ct. App. 1 Div. 2011)

“¶¶7 A forensic document examiner, Ms. Lines, testified that her review of the original signed documents indicated that it was very probable that the signatures were all the same and stated that she was ‘virtually certain’ that all the signatures were ‘executed by one writer, the same writer.’ Ms. Lines’ written findings concluded as follows:

“‘Although the signatures appear to be elongated scrawls, they are rapidly written one stroke signatures that contain repetitive complex movements; therefore, one writer very probably executed all of the signatures. The lack of identifiable letter forms in the signatures prevented a conclusive finding.’

“Ms. Lines testified that it was ‘extremely unlikely’ that any of the signatures were forged.”

COMMENTARY: Signatures of this type are certainly above average challenges. The last sentence leaves a bit to be desired as to logic. The too prevalent mentality seems to go this way:

1. Forgeries are written slowly, so they are “drawn” not written.
- 2a. This writing is so written. Therefore this writing is forged.
- 2b. This other writing is written quickly, therefore it is genuine.

The problem with this neat and easy avenue to expertise is that some people ordinarily write slowly, writing so-called “drawn” signatures. Thus, every genuine signature by such folk presumably must be forgeries. Then, skilled, professional forgers write their fabrications with a relatively fast tempo. Thus, every forgery by such criminals must be genuine signatures. In one case, the Homeland Security handwriting expert and his supervisor agreed that a respectable list of traits for a slow tempo proved the petitioner for sanctuary here was presenting a forged document. They did not notice that they both had all the same traits for a slow tempo in their own writing and signature on their reports about the alleged forgery and the reasons why. The only way Ms. Lines could support a finding of genuineness would be to make a comparison between the questioned signature and the exemplar signatures of the alleged signatory. Hopefully, the case report did an inadequate job describing her methodology and theory.

The lady’s name also appears in the literature as Sandra Ramsey-Lines, so if one researches her professional activities and credits, one would want to search both last

names, “Lines” and “Ramsey-Lines,” as well as simply “Ramsey.”

558. *In the Matter of the Estate of: Moonie H. Kong, Deceased. Stites, et al., v Kong, et al.*, Nos. 1 CA-CV 10-0419, 1 CA-CV 10-0899 (Consolidated). (Ct. App. AZ Division One 2011)

“Kathleen Nicolaides, a forensic document examiner for Affiliated Forensic Laboratory, testified that she received exemplars, which are known documents, that contained ‘extensive writing’ of handwriting and printing and signatures of Moonie from 1993 to 2007 to compare with the handwriting on the two wills. The exemplars were comprised of three canceled checks, a notarized quit claim deed, a notarized durable health care power of attorney, three personal income tax forms, and five letters of correspondence. Nicolaides concluded that she had ‘[t]he highest level of confidence’ that the author of the exemplars ‘executed both the handwriting and the Moonie Kong signatures appearing on the wills.’ Nicolaides continued that ‘there was such a sufficient amount of evidence and the quality of the evidence was such that . . . [she] was able to reach a positive identification.’ The owner of Affiliated Forensic Laboratory reviewed Nicolaides’ findings and agreed with her conclusions. Nicolaides also stated that although a lay person may place significance on Moonie’s variance of the letter ‘g’ in his signature, as a forensic document examiner, she examined the differences and concluded that it was ‘within his habit’ and not significant.”

COMMENTARY: Another case of routine bolstering by the opinion of an absent examiner, buddy to the testifying examiner, and in this case her boss, that is accepted and relied on by the trial court, apparently without objection and contrary to the rules.

559. *State v McNeese*, 1 CA-CR 10-0122. (AZ Ct. App. 1st Div. 2011)

Defendant, a peace officer on part duty due to injuries, issued a traffic citation using another officer’s name. He kept cash found in the car and never logged it in or entered the citation into the system. The original citation was spoliated by chemicals used to raise fingerprints, but it was entered into evidence. A copy that the document examiner had made was also entered into evidence though it had the examiner’s notations on it. Objection was made against both being received into evidence, but no authority was cited, therefor the assignment of error was overruled on appeal.

COMMENTARY: Those of us who have worked for defendants in criminal cases have seen how critical documents are severely spoliated by chemical treatments such as ninhydrin. This effectively destroys some evidence before it can be recovered and hampers defense efforts to make a proper handwriting or other document examination. Courts seem to be a bit cavalier about this hampering of defendant’s right to develop exculpatory evidence. In one case I could clearly see indentations on the document, but the ninhydrin had so warped and stiffened it that no method could visualize the indentations. Additionally, such tests as for DNA are precluded.

560. *State v Thompson*, No. 1 CA-CR 10-0778. (AZ Ct. App. 1st Div. 2011)

COMMENTARY: A document examiner testified for defense as to who wrote a fraudulent check.

2012

561. *Cal X-Tra, et al., v W.V.S.V. Holdings, L.L.C., et al.*, 276 P.3d 11 (Div. 1 AZ App. 2012)

In a lengthy and complex case reversing previous ruling due to fraud on the court, the handwriting expert is mentioned in passing as saying a witness wrote on certain documents that the witness admitted to having written on.

COMMENTARY: Cases like this have two values for our purposes. They show handwriting experts are routinely admitted to testify and that they are often not very vital to the outcome.

562. *Leroy v Seattle Funding Group of Arizona, LLC*, 1 CA-CV 10-0714. (AZ Ct. App. 1st Div. 2012)

“Leroy denied signing the [faxed] Resolution, and an expert forensic document examiner testified that he was ‘one hundred percent’ confident that Leroy’s signature on the Resolution was a mechanical or electronic duplicate of Leroy’s original signature from the operating agreement.”

COMMENTARY: Leroy won handsomely at trial but lost a chunk of his winnings upon defendant’s appeal. Neither party was given attorney fees on the appeal since neither stated the basis for the request. Small details can determine large results. My Mom used to recite this: “For want of a horseshoe nail, the shoe was lost. For want of the shoe, the horse was lost. For want of the horse, the trooper was lost. For want of the trooper, the company was lost. For want of the company, the cavalry was lost. For want of the cavalry, the army was lost. For want of the army, the battle was lost. For want of the battle, the war was lost. For want of the war, the kingdom was lost. All for want of a horseshoe nail.” Check out each little nail in your next forensic report.

563. *State v Rayos*, No. 1 CA-CR 12-0308 (AZ App. Div. 1 2013)

Defendant asserted on appeal that a letter, purportedly written by him and threatening witnesses against him, was admitted improperly. A prison guard testified he had found the letter in a trash can, copied it, and apparently disposed of the original. A handwriting expert, working from a poor copy, said it was probably written by defendant. Admissibility of the letter and the conviction were upheld.

COMMENTARY: Unfortunately, defendant testified that he had written the letter; otherwise, I believe he had a good argument on appeal, a belief all similar case decisions disagree with. My reasoning is this: Though in a criminal trial individual pieces of evidence need not be beyond a reasonable doubt, only the final finding of guilty, where the

final finding of guilt depends on a probable finding as a key link in the chain of proof, the entire chain becomes only probable. Of course, this reasoning does not take into account the unreasonable admission of a defendant asserting that this key link is true beyond a reasonable doubt.

564. *State v Tocker*, No. 1 CA-CR 11-0681. (Ct. App. AZ Div. One 2012)

COMMENTARY: Checks for large amounts transferred sums from murder victim's sole account to joint accounts with defendant. Document examiner testified that the murder victim had not written the checks.

2014

565. *Hertz v Coy; Coy v Coy*, No. 1 CA-CV 12-0608 (Ct. App. AZ Div. 1, 2014)

“¶ 23 Laura [Coy] also contests the exclusion of a handwriting expert and a forensic handwriting analysis of her alleged signature on a GMAC credit application. She fails to develop or articulate her precise argument as required by Arizona Rule of Civil Appellate Procedure (‘ARCAP’) 13. See Ariz. R. Civ. App. P. 13(a)(6) (requiring a party to support an argument with the ‘reasons therefor, with citations to the authorities, statutes and parts of the record relied on’). We therefore decline to address the argument. See *Polanco v. Indus. Comm’n*, 214 Ariz. 489, 492 n.2, ¶ 6, 154 P.3d 391, 393 n.2 (App. 2007) (holding that a party waived an issue by only mentioning it in passing in the opening brief, citing no supporting legal authority, and failing to further develop the argument).”

COMMENTARY: The reason for excluding the handwriting expert is not stated. However, an expert on emotional distress was excluded because of repeated and serious discovery violations.

566. *State v Romero*, 341 P.3d 493 (Ct. App. AZ Div. 2, 2014)

COMMENTARY: This case does not involve testimony from a handwriting expert, but there is both rejection of a challenge to admission of testimony by a firearms expert for the prosecution and denial of testimony by a critic of expert testimony for the defense. Handwriting case law is part of the legal basis for upholding the trial court's decisions in both instances, surveying cases both for and against admitting testimony by a critic of handwriting expertise, concluding there was no abuse of discretion in this case. I include this case as an example of how the same legal rulings regarding different disciplines may or may not apply to both. Arizona adopted federal rules of evidence, effective January 01, 2012, and consequently *Daubert* in place of *Frye*:

“¶13 Before Rule 702 changed in 2012, our supreme court determined that firearms identification testimony was admissible under the previous standard set forth in *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923). See *State v. Miller*, 234 Ariz. 31, ¶¶ 28-31, 316 P.3d 1219, 1229 (2013); *State v. Macumber*, 112 Ariz. 569, 570-71, 544 P.2d 1084, 1085-86 (1976). Although Arizona courts have yet to determine whether firearms

identification is sufficiently reliable for admission under amended Rule 702, we look to federal decisions interpreting Federal Rule 702 for guidance. See *State v. Green*, 200 Ariz. 496, ¶ 10, 29 P.3d 271, 273 (2001) ('When interpreting an evidentiary rule that predominately echoes its federal counterpart, we often look to the latter for guidance.');

Ariz. R. Evid. 702 cmt. to 2012 amend. ('The 2012 amendment of Rule 702 adopts Federal Rule of Evidence 702, as restyled.')."

An attorney might find of interest the discussion, and rejection, of Defendant's assertion that delay in the indictment prejudiced his defense. However, no concrete instance was cited to support the theoretical assertion of several examples of prejudice to the pursuit of his defense. Both Arizona and federal cases are cited in support of the rejection of this asserted error.

2015

567. *Miller v Federal National Mortgage Association, et al.*, No. 1 CA-CV 14-0602 (Ct. App. AZ Div. One 2015.)

COMMENTARY: Each side presented a handwriting expert, and that of Defendant was found more credible.

568. *State v Miranda*, No. 1 CA-CR 14-0452 (Ct. App. Div. 1 AZ 2015)

Miranda, an attorney, kept her client's complete bail when refunded to Miranda. A document examiner testified the client had signed an agreement, but jail records showed no visit or communication from Miranda on the date associated with the signature. The jury convicted for theft but not forgery, which was upheld.

COMMENTARY: There are occasions where other evidence shows a claim that someone wrote something was physically impossible. On <https://archive.org> my text *Forgery: Detection and Defense* is posted open access. It provides a series of questions to ask of claimants and witnesses to disputed documents that seek just such reputable claims as to the facts of the matter. One can be creative and ask questions tailored to the specifics of the individual case. Maybe case reports should name such experts, who can prove the physically impossible occurred, in the hope of eventually weeding them out.

569. *State v Olivas*, No. 2 CA-CR 2014-0350-PR (Ct. App. AZ Div. 2, 2015)

COMMENTARY: There is no explicit statement that a handwriting expert testified at trial, but the issue of using handwritten court papers filed in other cases as exemplars is discussed. We could infer a handwriting expert testified, but the exemplars could have equally been submitted to the fact finder to make the permitted handwriting comparison. I include this case for the ruling on the legality of using handwritten papers filed in other cases just in case you face a claim of error I do not recall reading about until I obtained this case report. And that may well be more a statement about my very limited exposure to legal matters rather than a statement about a rarity in litigation.

“¶8 Nor has Olivas made a colorable claim that counsel was deficient in failing to object to the use of Olivas's handwritten motions from another case as handwriting exemplars. He has identified no meritorious argument counsel could have made. As the trial court correctly noted, those documents are a matter of public record. See *Ariz. R. Sup. Ct. 123(c)(1)* (‘[T]he records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies.’). And we reject Olivas's argument that the use of court records as handwriting exemplars violates his due process rights or right to petition the government—the use of court records as evidence cannot reasonably be construed as interference with or punishment for Olivas's exercise of his constitutional rights. See generally *Ruiz v. Hull*, 191 Ariz. 441, ¶ 61, 957 P.2d 984, 1000 (1998) (‘The right to petition bars state action interfering with access to . . . the judicial branch.’). Nor are motions filed in a trial court exempt from disclosure as legal work product by Rule 15.4(b), *Ariz. R. Crim. P.*, as Olivas suggests.”

570. *In re the Julia K. Wootan Revocable Living Trust*, Dated July 18, 2000; No. 2 CA-CV 2014-0092 (Ct. App. AZ Div. 2, 2015)

After the granting of summary motion, a motion for a new trial was based in part on an affidavit by Wendy Carlson. This failed the requirements for being considered new evidence:

“¶19 For the trial court to grant a motion for a new trial based on newly discovered evidence, the moving party must show that ‘the evidence (1) is material, (2) existed at the time [the court entered summary judgment], (3) could not have been discovered before [the entry of summary judgment] by the exercise of due diligence, and (4) would probably change the result at a new trial.’ *Waltner v. JPMorgan Chase Bank, N.A.*, 231 Ariz. 484, ¶24, 297 P.3d 176, 182 (App. 2013); *Boatman*, 168 Ariz. at 212, 812 P.2d at 1030; see also *Ariz. R. Civ. P. 59(a)(4)*.”

Carlson’s affidavit did not exist at the time of the summary judgment; the opinion in her affidavit could have been had by the movants before the granting of summary judgment since another document examiner they had retained had already examined the originals; the originals were previously made available to them, while Carlson’s affidavit said she could have done better by examining the originals; and the movants had not done due diligence on several issues.

COMMENTARY: This and other case reports suggest that Ms. Carlson is more available than other document examiners. In several cases she is quoted as giving a legal opinion by use of such words as “fraudulent” and “forgery” to state her opinion about a disputed document. Quizzically I have not come across a case report where motion was made to strike her testimony in whole or part for thus asserting legal expertise.

2016

571. *State v Saunders*, No. 1 CA-CR 15-0416 (Ct. App. AZ 2016)

The report begins with a verbatim quotation of Arizona Rule of Evidence 702. The testimony on two issues is upheld: Paper-Matching Analysis and Handwriting Analysis.

COMMENTARY: Error was alleged in that the expert did not follow strictly recommendations of ASTM standard on matching torn pieces of a document. However, the standard recommended, did not require, such adherence, and thus the prior chemical treatment for fingerprints went to the weight, not admissibility, of the testimony. For the handwriting analysis, the limitations were testified to and taken into consideration in stating the level of assurance of the opinion. I am tending to the view that expert testimony should be excluded in whole or part where the expert witness does not testify to the limitations encountered and how they were taken in account in forming and expressing the opinion or were overcome in some way. Unfortunately, the human mind being as it is, an honest admission to difficulties met and how they were handled is taken as confession to an unreliable opinion rather than an objective and reliable methodology.

3. Arizona Supreme Court.

1995

572. *State v Orantez*, 902 P.2d 824, 183 Ariz. 218 (AZ 1995)

Handwriting expert testified that he could neither identify nor eliminate Defendant as writer of a note on a napkin.

COMMENTARY: Napkins, mostly being akin to Kleenex tissues, severely hamper writing.

2014

573. *Arellano v Primerica Life Insurance Company, Co., et al.*, No. 1 CA-CV 13-0011 (Ct. App. AZ Div. One 2014)

A handwriting expert testified for Arellano to forgeries in an application, but it seems forgery and related claims were dismissed against some defendants. Nevertheless, generally the jury found for Arellano, even a bit too much so that some money granted her at trial was nullified upon appeal.

COMMENTARY: The last item was in reference to Arizona rules as to what may or may not be awarded and as to what is at the Court's discretion.

574. *Shooter v Farmer, et al.*, No. CV-14-0180-AP/EL (AZ 2014)

COMMENTARY: Shooter sought to have Farmer stricken from a ballot on basis of forgery of signatures on a petition. Only Farmer presented testimony from a handwriting expert who said Farmer did not write signatures in question. Farmer prevailed.

D. ARKANSAS CASES.

1. Arkansas Trial Courts.

2004

575. *Progressive Business Systems, et al., v Superior Federal Bank*, Crawford County Circuit, Arkansas, No. CIV 2000-30, June 24-25, 2004.

COMMENTARY: This is from a list circulated by SWGDOC. I infer the county is the one in Arkansas versus another state with a Crawford County. Denbeaux was excluded from the trial, presumably as a proffered expert witness.

2. Arkansas Courts of Appeal.

1996

576. *Abernathy v Weldon, Williams, and Lick, Inc.*, 923 S.W.2d 893, 54 Ark. App. 108 (Ct. App. AR 1996)

Abernathy contended that his signature on a guaranty of a loan was a forgery. Thomas Vastrick's affidavit was filed by Abernathy. Motion to exclude Vastrick for discovery violation was denied, but later his testimony was excluded because his affidavit gave an inconclusive opinion. The dissenting opinion argued that since Vastrick could not eliminate the possibility of a forgery or a transferred signature, his testimony should have been allowed.

COMMENTARY: In one case I testified that a signature could not be identified. The judge then said my opinion was inconclusive, while I replied it was definite, namely that the signature was incapable of being identified for the reasons given. Taking purported tests of competency provided by a company claiming expertise in doing so, on several occasions I pointed out that the test did not provide necessary background information but left it to the test-taker to assume what it might be. For example, they provided a "questioned" gift certificate and a "genuine" one. The two had several very obvious differences. However, the tester never stated that any feature, such as the signature by one person or the style of red numbering, was required on genuine gift certificates. The "expert" had to do the impermissible and inexpert thing of making assumptions about all background data. They marked my very definite opinion regarding their improper procedure as inconclusive. Thus one was expert only if one had no hesitation in making assumptions about critical background data and thus submitted a speculative opinion. I stopped wasting my money on them, but they are still doing a brisk business providing competency tests that only incompetents can pass.

2001

577. *Morton v Patterson*, 75 Ark. App. 62, 54 S.W.3d 137, 2001 Ark. App. LEXIS 618 (Ark. App. 2001)

COMMENTARY: In a will contest, two handwriting experts from the Arkansas State Crime Laboratory testified that decedent had not signed the codicil in question. The judge gave greater credibility to contrary evidence and found the codicil to be genuine.

578. *Rabb v State*, 72 Ark. App. 396, 39 S.W.3d 11, 2001 Ark. App. LEXIS 49 (Ark. App. 2001); subsequent appeal, 2001 Ark. App. LEXIS 656 (Ark. App. 2001)

“For appellant’s second point on appeal, she argues that the trial court erred when it allowed the introduction of several writings [*13] that were discovered at her husband’s home in California. The writings were used by the State as part of its proof in the conspiracy charge. The State’s handwriting expert testified that there were ‘strong indications’ that the handwriting was by appellant and that it was a ‘virtual impossibility’ that someone other than appellant had produced the writings in question. The expert also testified that the writings were of a common authorship.

“However, none of the questioned writings were included in appellant’s abstract. The failure of appellant to abstract a critical document precludes this court from considering issues concerning it.”

In the subsequent appeal the expert testimony was considered regarding the relevance of incriminating documents related to drug convictions which were affirmed.

COMMENTARY: The case provides an object lesson in doing a job correctly and completely.

2004

579. *Cincinnati Life Ins., Co. and AON Risk Services, Inc. v Mickles*, 85 Ark. App. 188, 148 S.W.3d 768, 2004 Ark. App. LEXIS 159 (Ark. App. 2004)

COMMENTARY: A handwriting expert testified for Mickles that occupation on life insurance policy was written by someone other than applicant or agent taking the application.

2007

580. *Abdin v Abdin*, 94 Ark. App. 12, 223 S.W.3d 60, 2006 Ark. App. LEXIS 41 (2006); 101 Ark. App. 56, 2007 Ark. App. LEXIS 892 (2007)

Linda Taylor was Estate’s expert and Curtis Baggett plaintiff’s. Attack on Taylor, whom the court credited above Baggett, was that she had not considered age and health (she had said she would expect different effects than what the questioned signature showed) and she did not know Arabic (however her credentials were formidable). “By

contrast were Baggett's credentials. It was a credibility issue on which a court of appeals must give deference to trial judge."

The 2007 report was an effort by plaintiff to recoup his costs from the estate, but the will was never admitted to probate as required.

COMMENTARY: Linda Taylor demonstrates that the fundamental principles of handwriting identification are not language specific, though each language or national script may have additional principles specific to it.

581. *Jaramillo v Adams*, 268 SW 3d 351 (Ark. Ct. App. 2007)

At page 356: "After hearing the testimony of several witnesses, the trial court took the case under advisement. On October 13, 2006, the trial court entered a judgment in the case, finding that based on the expert opinion of Ms. Linda Taylor, which the court found to be unbiased, credible, and more convincing, the deed did not contain the signature of Grace Adams and the deed was declared canceled and null and void. The trial court also determined that the defenses of the statute of limitations and laches had no applicability to this case."

COMMENTARY: Jaramillo appealed the trial court's decision to take their parent's property from her. The statute of limitations and laches did apply; so the Court of Appeals reversed and dismissed. One wonders what made the brother stop dillydallying 20 years after the deed in his sister's favor was filed and 12 years after both parents had died.

582. *Woods v State*, 2007 Ark. App. LEXIS 760

Upon appeal Woods objected to testimony of a Sheriff's Department that Woods wrote an incriminating letter. However, this objection was not made at trial so was not preserved for appeal. An objection to a passage of the letter regarding past convictions was sustained and the letter redacted.

COMMENTARY: There is an old saying: "Speak up or forever hold your peace." Make every reasonable objection at the time and on the spot, whether being served what you think is bad food in a restaurant or a bad ruling in court.

2009

583. *Tapp v Landers*, 2009 Ark. App. LEXIS 208

COMMENTARY: At [*3]: "Dawn Reed, a forensic document examiner, testified that she compared the purported signature of appellant on the lease with known samples of appellant's signature taken from court documents. She opined that the signature on the lease was that of appellant."

2011

584. *Grady v Estate of Smith*, 385 SW 3d 854, 2011 Ark. App. 568 (AR Ct. App. 2011)

Footnote 2 reads: “It was disputed at the hearing whether Dennis Grady Jr. actually signed a document stating that he was a sub-contractor. Because of the integrity of the faxed and photocopied document furnished to appellants' handwriting expert, the law judge gave little weight to his opinion.”

COMMENTARY: I suggest the document examiner address explicitly and fully the limitations faced during the examination. Explain precisely how the limited physical evidence was milked for the best and most reliable evidence it could give and how any lack was either incorporated into the assurance of the opinion or was compensated for in other ways. It also helps to be conservative in expressing one's assurance so that upon cross one can thank the cross-examiner for pointing out something that now lets the opinion be held more assuredly.

2012

585. *Hankins v Austin, et al.*, 2012 Ark.App. 641 (AR App. Div. IV 2012)

“Thomas Vastrick, a forensic-document examiner, testified that, after comparing known writing specimens containing Willis's signature, he had concluded that it was ‘highly probable’ that Willis signed a check in the amount of \$47,800 but that Willis did not sign the deed. Vastrick testified that ‘highly probable’ meant ‘virtually certain.’ Vastrick testified, however, that various factors can affect a person's signature, including the position of the person in relation to the document, age and illness, and effects of medication. Vastrick testified that there was no way to scientifically quantify how loss of muscle strength, as is common with cancer patients, would alter a person's ability to sign his name and that this would differ from person to person.”

Later: “The trial court noted that, although Vastrick was sincere in his opinion that the deed was forged, his opinion was just that—an opinion—and Vastrick had admitted that he could not take into consideration factors such as muscle strength and effects of medication, both of which could have influenced Willis's signature.”

Still later: “The trial court recognized the limitations of Vastrick's opinion and chose to rely, instead, on Knight's testimony that he was present and saw Willis signing the deed. We cannot say the trial court clearly erred in relying on Knight's testimony in determining that the deed was not forged.”

COMMENTARY: I attended a seminar for expert witnesses given by a defense attorney who practiced before administrative law judges awarding disability benefits to workers. He quoted what a cynical third-year law student had told him when he was in first year, stating that there is no one more cynical than a third-year law student. The cynic had explained contradictory rulings by the U.S. Supreme Court this way: “They first decide where they want to go [for their decision], then figure out how to get there.” I

suspect this is one of those instances, but at the trial level. Judges are judges at whatever level they judge. The following comment could be made for a number of cases discussed in this text, but thankfully for a small minority, whatever cynical law students say.

On cross-examination, the expert is asked about issues not related specifically to the opinion just given on direct. Hypothetical and theoretical questions are asked. The proffering attorney is not aware how to address these speculative questions on redirect, so they quietly lay by the wayside until at closing argument they are represented as either things the expert did not consider or that *clearly* would have altered the opinion if they had been. The jury is persuaded by the cynical attorney, who used to be a cynical third-year law student, that at least this expertise is so fraught with multiple possibilities that there is no reliable probability to any opinion offered. Every speculative possibility is readily available to opposing counsel for argument and to the court for support to any decision in any direction that it feels is preferable.

As the reader goes through the various case summaries and commentaries on them, the reader might be alert to how often court decisions give every appearance of ultimately resting on sheer speculation, at other times on well founded speculation, but still speculation. The lesson for attorneys and expert witnesses? As an expert, do your best to offer solid, scientifically and technically based reasons for your opinion and make them case specific. As an attorney, you might as well address on redirect all seemingly innocuous questions of this type asked on cross-examination. Certainly your opponent is actually asking noxious questions, and you might as well go ahead and perfect your trust in your expert witness, because distrust may cause you to lose your case. After all, as in *Hankins*, you might already have lost to some dream-world your opponent has made to seem sound reality so that now you have nothing to lose but defeat.

2013

586. *Evangelical Lutheran Good Samaritan Society, et al., v Kolesar*, 2013 Ark.App. 195 (Ct. App. AR Div. IV 2013)

COMMENTARY: In an evidential hearing on a motion to compel arbitration, trial court heard testimony from a handwriting expert. No further information is given.

3. Arkansas Supreme Court.

1996

587. *King v State*, 916 SW 2d 732 (Ark. 1996)

At page 734: “A handwriting expert from the Internal Revenue Service testified that the person who signed the name of Marvin Baccus when purchasing the gun was Shelby Baccus.”

COMMENTARY: Shelby was apparently involved in luring the victim to the

murder location. The latter, having knowledge of another murder, had to be silenced. Conviction was reversed and remanded since the trial court did not give required instruction on an accomplice.

588. *Weaver v State*, 920 SW 2d 491, 324 Ark. 290 (Ark 1996)

Weaver's convictions for murdering her sister and subsequently using her identification were affirmed. Linda Taylor identified Weaver as having signed her sister's name to a power of attorney.

COMMENTARY: Reading about relatives such as Weaver should inspire us to curb complaints about the ones we have and urge us to aspire to be better relatives ourselves.

1998

589. *Roberts v Priest*, 975 SW 2d 850 (AR 1998)

In a challenge to a petition drive to place a proposed constitutional amendment on the ballot, serious deficiencies and violations of the law were found. Among them were 241 signatures that Linda Taylor testified were "highly probable forgeries." She was said to be "an undisputed expert witness." The petition was rejected.

COMMENTARY: Taylor had to work with copies of the petitions. Presumably she had access to original voter registrations for comparison signatures.

2000

590. *Womack v Foster*, 8 SW 3d 854 (Ark 2000)

In a runoff election for municipal judge, Womack won the job on election night, but Foster won the job after the appeal decision. Foster had Linda R. Taylor testify as a handwriting expert to invalidate some absentee ballots because someone other than the voter signed.

COMMENTARY: It seems both sides played fast and loose with the voting system, but the one who could prevail in the legal challenge must have been the better of two apparently bad choices.

2004

591. *Edmundston v Estate of Oral W. Fountain*, 84 Ark. App. 231, 137 S.W.3d 415, 2003 Ark. App. LEXIS 881 (Ark. App. 2003); reversed, 358 Ark. 302, 189 S.W.3d 427, 2004 Ark. LEXIS 451 (Ark. 2004)

COMMENTARY: All that is said is that handwriting experts testified.

2006

592. *Flagstar Bank v Gibbins, et al.*, 367 Ark. 225, 238 S.W.3d 912, 2006 Ark. LEXIS 433 (Ark. 2006)

At page 915: “The appellant relies on the testimony of its handwriting expert, who opined that the copies of the signatures on the deeds available in the present case were so lacking in quality that no conclusive determination of their authenticity was possible. The appellant also points to the dearth of contemporaneous signatures from Gibbins available in the instant case, and the fact that Gibbins was no longer able to provide a signature at the time of the trial.”

There was much other evidence of forgery, such as the notary testified that her notary stamp went missing for two weeks and was found on someone else’s desk and that she had been offered money not to testify. The Supreme Court affirmed the trial court’s finding that the deed Flagstar relied on was forged.

COMMENTARY: The court reporter can be thankful the offer did not follow the reported custom of Mexican drug dealers in persuading persons of the law to cooperate. They offer a selection between two metals, silver or lead, silver being money and lead being a bullet.

2008

593. *Save Energy Reap Taxes v Shaw*, 288 SW 3d 601 (AR 2008)

COMMENTARY: The judge considered the testimony of Dawn Reed, a forensic document examiner, in invalidating signatures on a ballot petition.

2014

594. *Stephens v Martin, et al.*, 2014 Ark. 442 (Ark. 2014)

Stephens challenged a ballot measure to raise the minimum wage. He had Joe Lucan testify to his expert opinion that the notary’s signature on 1666 petition parts were not the notary’s. The report explains the legal ins and outs why, “(a)lthough the 8501 signatures are invalid they were not facially invalid for purposes of the initial count...”

COMMENTARY: Maybe there is another rule why valid signatures are not facially valid. I suspect the law is as much a mystery at times to lawyers and judges as it is to us ordinary citizens.

E. CALIFORNIA CASES.

1. California trial courts.

2001

595. *Chan v Au*, San Francisco Superior Court No. 305344.

The Honorable Donald S. Mitchell issued his Statement of Decision on April 30, 2001. At page 7 His Honor says of Marcel Matley's testimony: "Contrary to the Defendant's testimony, very credible expert testimony established that the 'Promissory Notes' were each signed as part of a group, as one rested atop another when signed. Further, the expert testimony established that the first Promissory Note, dated September 9, 1997, was from a computer-generated form from which all the other form Promissory Notes were photocopied at the same time."

COMMENTARY: Not included in His Honor's decision was the fact that handwriting identification testimony was received that the precise order in which the notes were stacked when signed could be reconstructed by the indentations from the first note on top of the second note from top and so on the bottom note that left no indentation on any other note. The forms were proven to have been copied on the same machine by the trash marks. "Trash marks" are random spots of toner from machine defects or such things as scratches and soil on the glass. Comparing what trash marks appear on an earlier copy but not a later one from the same machine, and *vice versa*, helps give a relative dating as to the sequence in which copies were made. Thus it was one those cases that document examiners most delight in because they can apply two or more skills on the same documents to establish their opinions ever more firmly and maybe establish two or more independent opinions regarding the same document(s).

Defendant appealed the decision regarding rulings based on other evidence, all of which the Court of Appeal affirmed. The story has a moral for all of us. Plaintiff sold a large electronic billboard for Defendant who claimed there was no profit on the deal and that Plaintiff agreed to be remunerated as a partner and not a contract salesman. The promissory notes were an alleged key piece of evidence for this claim. However, my take on it all was that Defendant would have made a bundle of money if he had played fully fair with Plaintiff who would have promptly gone out and sold more electronic billboards, making Defendant modestly rich.

596. *People v Deip*, San Francisco, CA, Superior Ct. (2001?)

COMMENTARY: Defendant's Notice of Motion in *People v Olson* states that Mark Denbeaux was qualified as witness in evidential hearing on how bad handwriting expert evidence is.

597. *People v Olson AKA Soliah*, Case No. A325036. Notice of Motion to exclude any expert testimony concerning handwriting analysis. (Superior Court, Los Angeles, October 1, 2001)

COMMENTARY: This is included for two reasons. First, to illustrate the kinds of things one can find on the Internet by searching such terms as “handwriting AND expert” and individual names. Second, as an example of the tortuous reasoning processes of attorneys attempting to circumvent the plain and unequivocal provisions of the law when they are in the way of their client’s avoidance of the truth.

The argument pretends to explain how the troubles that handwriting expertise has had with *Daubert* proved it did not meet California’s *Frye* standard adopted in *People v Kelly*, 17 CA3 24, 130 CA Rpt 144, 549 P2 1240 (1976), and reaffirmed in the case *People v Leahy*, 8 CA4 587, 34 CR2 663 (1994). Even though, as this paper conclusively demonstrates, Federal Courts of Appeal already in 2001 had solidly sided with admissibility of handwriting expert testimony, the Notice of Motion pretends only the isolated District Court cases rejecting or restricting the expertise had ever happened. Naturally, no California court that I am aware of was ever misled by such lawyerly cleverness of argumentation and silliness of theory regarding expert handwriting testimony.

Olson eventually pleaded guilty, effectively defeating her attorneys’ Notice of Motion to Exclude. She was later charged with murder in connection with one of the SLA bank robberies, to which she also pled guilty.

2008

598. *Elyaszadeh v Neman*, Los Angeles Superior Court, BC 328019, July 30, 2008

Mr. Blanco was plaintiff’s handwriting expert and testified that it was “highly probable” plaintiff’s signature on the key document was simulated. Mr. Howard Rile was defendant’s handwriting expert and could not say whether plaintiff’s signature was genuine or not. At page 8: “However, Mr. Rile also admitted that he has a long-standing and serious professional dispute with Mr. Blanco which usually causes him to recuse himself when Mr. Blanco is on the other side of case.”

COMMENTARY: The judge said Neman was a “con” and ruled against him, ordering counsel for both parties to submit briefs for the penalty phase.

2011

599. *Kriman v Yorkis, et al., and Related Cross-actions*, Superior Court of the State of California, County of San Mateo, Case No. CIV 491312. 2011.

Plaintiff’s motion to strike all testimony and evidence of, and to prevent further evidence from, Defendant’s handwriting expert, was denied after a hearing on the filings.

In the end Plaintiff left with nothing of what he had sued for.

COMMENTARY: James Blanco was Plaintiff's expert who submitted a declaration in support of motion to strike, and Marcel Matley was Defendant's expert who submitted a reply declaration. The latter is available on www.handwritingexpertconsultant.com.

2. California Courts of Appeal.

1993

600. *People v Johnson, et al.*, 19 Cal. App.3d 778, 23 Cal. Rptr.2d 703 (CA App. 1 Dist. 1993)

Defendants had offered two experts, one a sociologist and one an ex-con who was an "expert liar," to tell the jury how prone to lying convicts were. Appeal Court said fact that convicts tended to lie was common knowledge which the jury possessed.

At page 779: "Moreover, the defendants' proffered testimony was of dubious scientific value given the experts' lack of knowledge of the specifics of the case."

At page 790: "In the last analysis there is only one neutral expert in the courtroom, the trial judge. It is for this reason we are inclined to give great weight to the trial judge's decision as to the admission of expert testimony, and will not reverse that decision absent a clear showing of abuse of discretion. (See *People v Alcala*, supra, 4 CA4 at p P. 7811-82, 788-89.)"

At page 791: "The fact that, as appellants contended, this witness had apparently been allowed to testify as a paid expert liar in numerous other cases was definitely not an argument for admission here. Rather, it merely tended to highlight an infrequent tendency we decry: the unwarranted admission into evidence of such irrelevant, unreliable, and nonscientific testimony, over proper objection. The proposed testimony was irrelevant to the specific issues before the jury, and of very dubious (if any) scientific value."

At page 783 the handwriting expert is mentioned: "The day after the murder, and for some days thereafter, an inmate began trying to contact the authorities with an offer of his knowledge and testimony regarding the murder, in exchange for early release from prison. He also provided copies of incriminating documents — messages passed by inmates called 'kites' — which an expert in handwriting testified had been written by appellant Woodard and his codefendant Masters, and which discussed their roles in the murder in some detail. An investigator interviewed the inmate and promised him he would be released early in return for his testimony, but the prosecutor refused to honor that deal. Instead, the inmate testified for the prosecution under a grant of immunity for all the crimes he had committed in prison; and with a guarantee that, for his own safety, he would serve the remainder of his term outside California."

Other writings were found in defendants' cells that also implicated them.

COMMENTARY: One day I waited in the chambers of a newly installed judge while my wife, who was then his pro tem court reporter, and he went to his installation

celebration. I perused volumes of California Appellate Reports and happened upon this case report. I sent a copy to Professor James Starrs, editor of *Scientific Sleuthing Review*, who published a comment on it in his usual witty style. Maybe the expert liar would have created a more lucrative and valuable service if he could have explained to us all how to tell when expert witnesses are lying.

1994

601. *Ripley, et al., v Constantine Pappadopoulos, et al.*, 23 Cal. App. 4th 1616, 28 Cal. Rptr. 2d 878, 1994 Cal. App. LEXIS 290, 94 Cal. Daily Op. Service 2381, 94 Daily Journal DAR 4414 (CA App 1994)

It was proper to award costs for the overhead projector plaintiff's questioned document examiner used to illustrate testimony. However, the Court of Appeals deleted expert fees from the award of costs.

COMMENTARY: It is advantageous to have a guide on all rules concerning expert witnesses in the jurisdiction where one works as an expert consultant. In California there is *California Expert Witness Guide, second edition*, by Raoul D. Kennedy and James C. Martin, Oakland, CA, Continuing Education of the Bar. The publisher issues annual updates.

602. *Scott, a Minor, v County of Los Angeles, et al.*, 27 Cal. App. 4th 125; 32 Cal. Rptr. 2d 643; 1994 Cal. App. LEXIS 783; 94 Cal. Daily Op. Service 5923; 94 Daily Journal DAR 10695 (CA App. 2 Dist. 1994)

"Maxwell's case log did not indicate any visits with Jimmie and Rickitia in Bullock's home before December 24, 1987, although she prepared a report for a judicial review of the children's status on November 24, 1987. Thereafter, Maxwell's entries in the log indicate face-to-face visits on January 13, February 22 and April 10. However, a handwriting expert testified that those entries appeared to have been made after June of 1988. Maxwell herself admitted she made the entries 'possibly [in] June' of 1988."

Zsa Zsa Maxwell was a children's services worker with the County who was involved with the placement and supervision of Scott in a foster home where the child suffered physical harm.

COMMENTARY: This is another case where one would like to know the method the expert used in effectively determining the false dating of the entries.

1995

603. *People v Tai*, 37 Cal. App. 4th 990, 44 Cal. Rptr.2d 253 (1 Dist 1995)

In a credit card case, the Fifth Amendment does not protect against compelling of handwriting exemplars, and the expert, David Moore, may testify as to disguise of same, which is evidence of consciousness of guilt.

COMMENTARY: The Court of Appeal stated that this precise issue of expert testimony as to disguised writing had not been considered by California courts of appeal. However, *Corn v State Bar of California*, 68 Cal.2d 461, 67 Cal.Rptr. 401, 439 Pac.2d 313 (1968), addressed precisely that issue stating that it was proper for a handwriting expert from comparison of signatures to testify, first, that both were written by same person and, second, that the purported signature of payee on a warrant was so disguised as to deceive the average person into believing that a different person had written it, so that the expert addresses the issue of the writer's state of mind.

1997

604. *Bradley v Medical Board of California, et al.*, 56 Cal. App. 4th 445; 65 Cal. Rptr. 2d 483; 1997 Cal. App. LEXIS 561; 97 Cal. Daily Op. Service 5663; 97 Daily Journal DAR 9089 (CA App 4 Dist. 1997)

"After Ledakis amended the accusation to include a charge Dr. Bradley violated Business and Professions Code section 725 by excessively prescribing drugs to Lori, he released her records. After reviewing them, Dr. Bortz changed his mind and determined Dr. Bradley's treatment of Lori was appropriate. However, he noted the medical records were "nearly perfect" and suggested a handwriting expert examine the originals to see if they were authentic. Because the handwriting expert could not determine if any alterations had been made, Ledakis dismissed the charge pertaining to Lori."

COMMENTARY: There seems to have been no expert testimony, but pretrial work exonerated the accused of some charges. However, due to an undercover investigation he voluntarily surrendered his medical license and then sued various state agencies or employees. Due in part to immunity from suit, defense motion to dismiss was granted and upheld on appeal. This is an instance that shows the ultimate damage the misperceptions of the anti-expert experts will inevitably cause, as one court had pointed out. Both innocent defendants and victims of forgery are denied a reliable method of proof of their cause. The anti-expert experts, acting as trial consultants and/or witnesses, inveigh against one of the protective methods their criminal clients need both to prove innocence, if innocent, and to impeach opposing evidence whether they be innocent or guilty.

605. *Daum, et al., v Spinecare Medical Groups, Inc., et al.*, 52 Cal. App. 4th 1285, 61 Cal. Rptr. 2d 260, 1997 Cal. App. LEXIS 122 (C), 97 Cal. Daily Op. Service 1262, 97 Daily Journal DAR 1843 (CA App. 1997)

In a medical malpractice case the issue hung on whether the patient had been properly informed about the experimental nature of a procedure that incapacitated him and whether he had given his consent. "A forensic document expert testified that the signature [on the consent form] was Mr. Daum's, and showed no changes that might indicate Mr. Daum was unable to see or read the document." However, the applicable legal requirements were not met, so the jury's finding for defendants was reversed, except for

nonsuit for one doctor.

COMMENTARY: It is noteworthy that the expert could testify to what amounted to competency as indicated by the signature.

1998

606. *People v Jones*, 67 Cal. App. 4th 724; 79 Cal. Rptr. 2d 258; 1998 Cal. App. LEXIS 910; 98 Cal. Daily Op. Service 8139; 98 Daily Journal DAR 11290 (CA App. 2 Dist. 1998)

COMMENTARY: This is the entirety of the discussion of the expert testimony: “A handwriting expert testified that the handwriting on Megrdle's check cashed at Toys-R-Us resembled Brown's more than appellant's.”

1999

607. *Kroupa, et al., v Sunrise Ford, et al.*, 77 Cal. App. 4th 835, 92 Cal. Rptr. 2d 42, 1999 Cal. App. LEXIS 1140, 2000 Daily Journal DAR 823 (Cal. App. 1999); review denied, 2000 Cal. LEXIS 1894 (Cal. 2000)

At page [*8]: “Sunrise Ford’s file on the Kroupa’s lease also contained two ‘trade-in’ forms, one for each of Kroupa’s two vehicles. These forms contained Mr. Kroupa’s signature (although, despite the testimony of Kroupa’s own handwriting expert, Mr. Kroupa denied ever seeing or signing them).”

COMMENTARY: Kroupa lost at trial but won on appeal.

608. *Estate of Morris I. Brenner, Osborne v Brenner*, 76 Cal.App.4th 1298, 91 Cal.Rptr.2d 149, 1999 Cal. App. LEXIS 1090, 99 CA Daily Op Serv 9823, 99 Daily J DAR 12607 (CA Ap 1999); rev. den., 2000 Cal. LEXIS 3385 (CA 2000)

Handwriting expert testified that both original ink writing and photocopied written portions of proffered holographic will were in decedent’s hand. Trial court denied probate on theory that a holographic will had to be in original handwriting of decedent, but Court of Appeal ruled it need only be in decedent’s own handwriting, so photocopied portion satisfied the statute.

COMMENTARY: The expert’s degree of certainty as to the photocopied writing was not indicated, but since probate is in civil court, it seems that it need be more likely than not, by a preponderance of the evidence, which equates to “probable” in technical terms for handwriting opinions.

2000

609. *People ex rel. Lockyer v Superior Court of San Diego County, et al.*, 83 Cal. App. 4th 387, 99 Cal. Rptr. 2d 646, 2000 Cal. App. LEXIS 689, 2000 Cal. Daily Op. Service 7282,

2000 Daily Journal DAR 9615 (Cal. App. 2000)

Admission in evidence of documents that had been seized by law enforcement did not violate Fifth Amendment rights since they had been authenticated by a handwriting expert, not by the defense attorney.

COMMENTARY: A forensic expert's usefulness can often extend beyond the forensic discipline.

610. *In re the Marriage of Nilsen*, No. 95 FL 0471, Superior Court, Humbolt County, No. 95 FL 0471 (CA Ct. App. 5 Dist. 2000)

The Court of Appeals states at page 12 of an unpublished opinion: "Matley testified the notes dated June 1, 1988 and July 16, 1991 could not have been signed on those dates, because the paper... was not available before December 1991. [Respondent's counsel] then stipulated the notes were prepared and signed in March 1995.... [Matley's] examination of the ledgers...led him to conclude entries reflecting annual accumulation of interest...had all been made at the same time."

COMMENTARY: The evidence was a combination of technical data discovered through indentation studies and watermarks as well as evidence from handwriting which revealed clues of handwritten entries made at one writing but claimed to have been made at separate dates and clues from handwriting entries that had legitimately been made at separate times and so dated. At <https://Archive.org> you can download my open-access monograph titled *Logged Entries: Made Separately or Sequentially?*

611. *In re the Marriage of Ronald F. and Marie Richardson; Ronald J. Richardson, as Executor, etc., Respondent, v Marie Richardson, Appellant*, Court of Appeal, State of California, Fifth Appellate District, F032260, Super. Ct. No. 154564, Opinion, April 13, 2000. Not to be published in the official record.

Marie claimed that her deceased, divorced husband intended her to have the proceeds of a medical insurance settlement. In support of the claim she presented a letter to decedent's former attorney purportedly signed by decedent. At page 6: "The trial court found, as we do, that Marie forged the letter. We have reviewed the testimony of the handwriting expert and find it credible and unimpeachable."

COMMENTARY: The expert was Marcel B. Matley of San Francisco, a certified member of National Association of Document Examiners. Not mentioned in the decision is that the principal exemplars used were two checks from a prior case in the *Estate of Ronald F. Richardson*. Marie had claimed decedent gave them to her and she assisted him in writing his signatures as payor. The trial judge found she had written them herself, relying on Matley's testimony of how impossible her story was of how she had assisted him.

612. *Guevara v Mansour*, 2001 Ca. App. Unpub. LEXIS 460 (CA App 2001)

Nancy Cole testified to the authenticity of a deceased woman's signatures and initials on a disputed will. Her testimony was found to be more credible than that of two lay witnesses.

COMMENTARY: A case that has the added virtue of reiterating California's rule that expert handwriting evidence can be credited above lay testimony, citing *In re Clark's Estate*, 93 Cal. App. 2d 110, 208 P.2d 737 (1949), in which expert testimony prevailed over that of attesting witnesses to prove falsity of a signature.

613. *People v Boyd*, 2001 Cal. App. Unpub. LEXIS 2502 (Cal. App. 2001)

Returning home from work at Macy's, Ms. Gothard was robbed of a bag with two sweaters and the receipt for them. "The morning after Gothard was robbed, a man, later identified as the defendant, returned two cashmere sweaters to Macy's. Sales clerks Rosemary Hart and Nawal Charudhry selected the defendant from a photographic lineup as the [*7] man who returned the sweaters. They also identified defendant at trial. A handwriting expert opined that the signature used during the return was similar to defendant's handwriting."

COMMENTARY: It does not say whether the robber returned the purchases for cash or a better fit.

614. *People v Protsman*, 88 Cal. App. 4th 509, 105 Cal. Rptr. 2d 819, 2001 Cal. App. LEXIS 279, 2001 Cal. Daily Op. Service 2988, 2001 Daily Journal DAR 3681 (Cal. App. 2001)

At page [*6]: "A handwriting expert who reviewed two samples of Protsman's handwriting testified it was probable that Protsman had written the letter purportedly from Smith stating she was paying Protsman and Dee the money she owed and had written out two of Smith's checks. The expert testified that Protsman attempted to disguise his handwriting in each of his exemplars."

COMMENTARY: The case report offers an example how California's "general acceptance" rule for admissibility of novel scientific evidence works. A defense medical expert offered a PET scan to demonstrate prior brain trauma. This usage was shown by prosecution medical evidence to lack acceptance in the relevant branch of medicine, so it was properly excluded. Thus, the rule can be applied to an entirely new field or to a novel technique within an otherwise established field or to a new application of a generally acceptable technique.

615. *Santana vs. Women's Workout and Weight Loss Center, Inc.*, 2001 Cal. App. Unpub. LEXIS 1186 (CA Ct. App. 6 Dist. 2001)

The Case Report discusses at length statements in Matley's Declaration under

Penalty of Perjury filed with the Trial Court in a motion for reconsideration. The Court of Appeal states as facts regarding technical matters, such as font size and legibility, relevant representations made in Matley's Declaration. The granting of Defendant's Motion for Summary Judgment by the trial court was reversed with costs awarded to Plaintiff. Defendant settled prior to trial granted by reversal and remand.

COMMENTARY: Matley had established that all handwritten entries, such as Santana's signature on the contract in dispute, were genuine; also, they had not been denied. Santana's attorney based the case on the demonstrable fact that some technical requirements in the law, such as size of fonts on such contracts, had not been met.

2002

616. *Estate of Laverne Shinkle; Thompson v Lindop, as Acting Public Administrator, etc., et al.*, 97 Cal. App. 4th 990, 119 Cal. Rptr. 2d 42, 2002 Cal. App. LEXIS 3469, 2002 Cal. Daily Op. Service 3418, 2002 Daily Journal DAR 4257 (Cal. App. 2002)

COMMENTARY: It states that a handwriting expert testified, but no particulars are given. The principle discussion considers when undue influence is presumed and how the presumption is satisfactorily answered.

2003

617. *People v Churchfield*, 2003 Cal. App. Unpub. LEXIS 5307 (4 App. Dist.)

Defendant was convicted of drug offenses and appealed denial of his motion to suppress evidence. He denied having given voluntary permission to an officer to search his residence. James Black, examiner of questioned documents, testified that the consent search waiver had characteristics supporting defendant's claim. For example, boxes to be checked were checked in different inks on different surfaces. The trial court found Black's testimony to be "troubling," but ruled against defendant. Appeal court accepts "trial court's resolution of conflicting facts, unless we find the facts determined by the court so incredible as to be unworthy of belief... Given the facts presented, it was not outlandish or unworthy of belief that the officers obtained the defendant's consent, as they testified in the trial court."

COMMENTARY: It was a matter of contradictory testimony from opposing parties, except that the only independent and disinterested testimony came from the expert, which apparently was discounted, however troubling the truth was.

2004

618. *Hansen v Hansen*, 2004 Cal. App. Unpub. LEXIS 9732 (Cal. App. 2004)

"[*15] The trial court did not arbitrarily reject the expert's opinion that the signature on the quitclaim deed was not Betty's. The expert's ultimate conclusion was conditional: 'If

the exemplar signatures accurately and completely represent the signature of Betty Hansen, she did not write the signature on the quit claim deed.’ (Italics added.) The expert admitted the exemplar signatures he used were several years old, and time and Betty’s intervening stroke could have affected her signature. Although Patricia describes Christine’s testimony regarding the signing and notarization of the quitclaim deed as contradictory, Christine testified, in no uncertain terms, that Betty signed her own name to the deed. We conclude substantial evidence supported the trial court’s findings, and we therefore affirm the judgment.”

COMMENTARY: One could reasonably argue either way that the expert should have refused to testify absent contemporaneous signatures or that he did well to provide the best assistance to the client that he could in the circumstances. Because he was forthcoming as to the difficulties involved, I believe he did the proper thing.

619. *La Vine v Silva*, 2004 Cal. App. Unpub. LEXIS 5321 (Cal. App. 2004)

“La Vine argues there was insufficient evidence that he signed repair orders numbered 017354, 017404, 017422 and 017458. He cites the testimony of his retained handwriting expert, who opined the signature appearing at the bottom of each repair order was not La Vine’s.

“...The judgment, however, specifically stated that it was unnecessary to determine if the signatures were authentic.... The issue has no bearing on any issue in the case as La Vine paid three of the orders and disputed the fourth only on the basis the work was under warranty.”

COMMENTARY: Then later in the opinion we read how inconsequential an expert can be in a case and how frustrating to the expert’s best work the client can be: “The judgment, however, states that if the authenticity of the signatures were an issue, the trial court would give very little weight to the opinion of La Vine’s handwriting expert. One of the stated reasons is that the expert examined La Vine’s signature only on checks. The trial court opined the expert’s opinion would be entitled to more weight if he had reviewed La Vine’s signature on other documents to ensure La Vine was not more careful when signing checks than at other times. In this regard, the trial court stated, [*24] ‘It is also notable that Mr. La Vine failed to produce any other document with his signature....’

“This whole discussion, however, is academic. The trial court did not determine if the signatures were authentic because that question was immaterial to the case. In other words, even if the trial court’s statement were wrong, the judgment would not be affected.”

620. *People v Brudvik*, 2004 Cal. App. Unpub. LEXIS 11177 (Cal. App. 2004)

“Sometime after April 28, 1997, authorities, by legal means, intercepted a letter and an envelope sent by defendant, in which defendant had written, ‘I robbed a bank,’ and signed it ‘Dennis.’ A handwriting expert testified that the handwriting on the letter was the same as on the demand note to the bank teller.”

COMMENTARY: Some defendants do not seem to get the message that they are not

supposed to confess, especially in writing, without first striking a deal.

621. *People v Mouradian*, 2004 Cal. App. Unpub. LEXIS 11889 (Cal. App. 2004)

COMMENTARY: A handwriting expert testified on surrebuttal that defendant had not filled out or signed certain DMV documents.

622. *People v Nawi*, 2004 Cal. App. Unpub. LEXIS 11648 (Cal. App. 2004)

Defendant attempted to counter DNA, fingerprint and handwriting evidence with his own experts and by challenging the reliability of the three disciplines. DNA is given the most extensive discussion, and the discussion of handwriting offers an excellent survey of the California rule, based on *Frye*, and how it differs from the Federal.

At page [*61]: “Defendant does not challenge that ruling on appeal, but he argues that the prosecution’s handwriting expert should have been required to conduct her comparisons using original documents, not copies. We reject the argument. First, insofar as defendant complains the expert did not obtain an original exemplar of his handwriting, the complaint is contrary to the law. A self-serving exemplar obtained after arrest is not useable because of the risk of deceit. *People v. Sauer* (1958) 163 Cal. App. 2d 740, 745; *People v. Golembiewski* (1938) 25 Cal. App. 2d 115, 119.) Handwriting comparisons may properly be made with copies. (*People v. Norwoods* (1950) 100 Cal. App. 2d 281, 285.) Defendant’s own handwriting expert so testified. The evidence sufficiently established that the comparison documents were genuine copies, and defendant makes no contrary claim on appeal.”

Later: “[*62] The prosecution’s expert acknowledged that the use of copies made the comparisons more difficult and precluded an absolute identification. However, the expert found several visible characteristics, such as formation design of the letters, height ratios, and spacing, that enabled her to conclude with a high degree of probability that the signature on the safe deposit entry ticket was by the same person who signed the specimen documents. She found no dissimilarities between the signatures. The jury heard the limitations faced by the expert and was entitled to decide what weight should be given to her conclusions. The limitations did not preclude admissibility of the expert’s testimony.”

Footnote 23 reads in part: “The [defense] expert opined that because only copies were available—not the originals—and because the copies were poor, no conclusion could be reached on whether the same person signed all the documents. However, the expert found no significant dissimilarities between the questioned signatures and the known signatures.”

The Court then considers the contention that reliability of handwriting expertise had to be shown before it was admitted. The Court notes that it has long been admissible in California and that, while some Federal district courts rejected or restricted it, every Federal circuit court to consider the question ruled it admissible.

COMMENTARY: Although this is an unpublished case report and may not be used as a legal precedent, surely its information and logic can well be used. I would suspect it is unpublished because in California there is ample legal precedent on every issue discussed.

The discussion about use of copies is very instructive. Some handwriting experts refuse to assist clients unless there are originals or at least high quality copies. However, fact-finders often must make decisions based on the poorest of copies, and in such situations they need expert assistance even more to extract whatever evidence there is and to know where caution is required. Only a very good expert can offer proper assistance in very difficult conditions.

623. *People v Wells*, 12 Cal.Rptr.3d 762, 118 Cal.App.4th 179 (CA St. App. 1 Dist. 2004)

COMMENTARY: Two handwriting experts testified in a prosecution for sex with minors.

624. *In re the Marriage of Natalie and Vincent Reicheun, Sr.; Armstrong v Reicheun*, 2004 Cal. App. Unpub. LEXIS 11566 (2004 2 Dist Ct App CA)

COMMENTARY: James A. Blanco testified that the wife's purported signature on a deed was traced from an earlier trust agreement.

625. *Sina v McLaughlin*, 2004 Cal. App. Unpub. LEXIS 751 (Cal. App. 2004)

"There is no doubt that the trial judge received expert testimony from an independent handwriting expert after the parties had rested without affording either party an opportunity to cross-examine the expert. That was highly irregular, and clearly deprived the parties -- McLaughlin in particular -- of the opportunity to demonstrate whether there were any flaws in the expert's analysis. (See *People v. Archerd* (1970) 3 Cal.3d 615, 638, 91 Cal. Rptr. 397 ['the interviewing of potential witnesses [*8] anywhere but on the witness stand should be avoided'].) Under *Evidence Code section 732* ['expert appointed by the court . . . may be called and examined . . . by any party to the action'], the parties had a right to call and cross-examine the expert witness appointed by the court.

"We cannot say the error was waived. True, McLaughlin's posttrial brief bravely declared that 'the defense has no objection and is confident that the independent expert's findings will mirror Mr. Blackford's findings and further support Mr. Blackford's testimony.' But this declaration was an agreement to the appointment of the expert; counsel still had a legitimate right to expect the court to reopen to allow parties examination of the witness under *Evidence Code section 732*. This statement does not constitute a waiver of rights under *Evidence Code section 732*.

"Moreover, the absence of cross-examination may have led to a serious miscarriage of justice. It appears that the judge may have *mixed up* the appropriate handwriting exemplars, as revealed by certain language in the statement of decision."

COMMENTARY: Paul Blackford was the handwriting expert whom McLaughlin called and whose credibility the judge rejected, apparently a precipitous and unfair rejection.

626. *Westside Investments, Inc., v Rabizadeh*, 2004 Cal. App. Unpub. LEXIS 4540 (Cal. App. 2004)

COMMENTARY: At page [*6]: “At trial, defendant denied signing the depositor agreement. The trial court found, however, that he did sign the agreement. Kohanchi testified that defendant signed it and plaintiff’s handwriting expert testified that the signatures on the depositor agreement were defendant’s.”

2005

627. *Estrada, et al., v Celestine, et al.*, 2005 Cal App. Unpub. LEXIS 4863 (CA 2 App Div 2005)

At [*8]: “The notary testified that Jose signed only a promissory note on April 13. He did not sign a deed of trust; if he had, she would have noted that fact in her records. A document examiner testified that Jose Estrada’s signatures on the original recorded deed of trust and promissory note were obviously photocopied and that the crimped notary’s seal did not appear to be genuine.”

COMMENTARY: It seems to have been a multiple cut-and-paste job.

628. *Harris v Fremont Investment and Loan, et al.*, 2005 Cal. App. Unpub. LEXIS 5322 (CA App 3 Div 2005)

As plaintiff, Harris lost and appealed, the trial court’s judgment being upheld. His handwriting expert at trial was James A. Blanco. At [*11]: “Harris’s expert, Blanco, testified Dr. Love’s signature on several documents appeared forged. However, Blanco also testified signatures can change over time, particularly with age and ill health. The genuine signatures Blanco used to authenticate Dr. Love’s signature were 12 and 30 years old. Newer signatures would have been preferable. Blanco acknowledged that, assuming it was genuine, a November 2000 signature reflected significant deterioration from the last signature known to be genuine, which was from 1989.”

The trial court and Court of Appeals found Blanco’s testimony to support defendants’/appellees’ position: “The court found the evidence shows there was not such an apparent or noticeable discrepancy that a reasonable person examining the genuine signatures and the allegedly forged signatures would be caused to suspect that Dr. Love did not sign the Love grant deed, the Fremont deed, or other documents submitted [*22] to Fremont. The court further found no evidence anyone connected with Fremont ever actually compared the signatures cited by Harris.

“Our review of the record reveals no evidence any employee of Fremont or Chicago Title ever compared the signature on the 1989 deed with the disputed signature on the Fremont deed.

“Moreover, Harris’s own handwriting expert testified as to the difficulties in assessing authenticity. Blanco testified that a signature can change over 10 years. Medical problems contribute to handwriting deterioration. Photocopies obscure detail and make

authentication more problematic. Blanco testified that in assessing the authenticity of Dr. Love's signature on a document, he could not make an accurate determination absent a microscope."

COMMENTARY: Affiliated with AAFS and ABFDE at the time, Mr. Blanco's methods supported a finding of no fraud rather than a finding of forgery as his client asserted and he opined. It is an object lesson that, if an expert witness is to go against recognized standards such as having exemplars closer in date than 10 years, he must provide compelling reasons for doing so. The case report gives no indication that several violations of standards were supported by valid reasons in this case. The cross-examiner did a masterful job of exposing all the weaknesses in the expert opinion, while apparently plaintiff attorney failed to rehabilitate the witness. At trial, expert witnesses are at the mercy of their client as to what to take up on redirect, and after trial they are at the mercy of the court as to what is important to put into the written decision.

2006

629. *People v Prescod*, 2006 Cal. App. Unpub. LEXIS 1183 (CA App 2006)

At page [*5] David Oleksow obtained handwriting exemplars from defendant but believed them disguised "because the samples showed the writing to be very controlled and lacked the fluency normally seen in writing." Sandra Homewood was forensic document examiner for the prosecution at trial. A notary public testified that the questioned deed had not been notarized by her. Homewood testified Prescod had written various signatures on the deed and other documents but as to grantor's signature "the signature in question was made up of scribbles and scratches." The victim was defendant's mother. Conviction and sentence were affirmed.

COMMENTARY: One would hope that defendant's normal course of business and social life writings were examined before the opinion of disguise was given, because many people normally write with notable control and lack of fluency. It is only those who have graphic maturity and mastery of the skill who write fluently and at a fast tempo.

630. *People v Simmons*, 143 Cal. App. 4th 256; 48 Cal. Rptr. 3d 857; 2006 Cal. App. LEXIS 1467; 2006 Cal. Daily Op. Service 9075; 2006 Daily Journal DAR 12974 (CA App. 6 Dist. 2006)

The last statement before the Conclusion of the case report is this:

"(c) Other Factors

"In discussing prejudice, it is noteworthy that there were significant factual disputes in this case. Combined with these disputes, two evidentiary matters, when considered, show how far this case is from open and shut. First, an otherwise weak handwriting analysis used a writing exemplar purportedly from defendant's file without foundation. Second, in anticipation of an issue raised at the preliminary hearing that running a kite between cells was impossible because there were steel plates welded to the doors, the prosecution put on

testimony of an investigator who claimed to have had the possibility demonstrated to him by another prison inmate, seemingly without the necessary foundation.”

The case was remanded for a new trial primarily because the trial court let Defendant be shackled during the trial without having first made the proper findings supporting the shackling on the record as required. This was prejudicial to the Defendant and was not harmless.

COMMENTARY: This case points out one inadequacy of officially adopted and published standards in the discipline. Historically, standards have been written by eminent authors and published in books and journals, so there is no dearth of guidance available; it just takes a bit of work to find what one needs. If the description “an otherwise weak handwriting analysis” is accurate, the expert failed to provide the factual and theoretical bases for the opinion and why limitations prevented a higher degree of assurance. However indefinite an opinion might be, the work supporting it and the explanation of how well technical standards could be satisfied should be anything but weak, rather it should be thorough and persuasive, delivered with confidence and forthrightness. Reading with critical judgment, and not just a critical personality, the officially adopted and published standards in document examination, one gets the nagging suspicion they may have been designed as a cover for long-standing but inadequate practices rather than a program for the pursuit of excellence.

2007

631. *Mille v Citizens Business Bank, et al.*, B190412 (Ct. App. CA 2 Dist. 2007)

“Howard C. Rile (Rile) was retained as a handwriting expert. He opined that the signatures on the handwritten notes and specific gift designation were ‘carefully executed simulations’ of David’s signature.”

COMMENTARY: That is the entirety of statements about a handwriting expert. The seemingly standard pronouncement of “carefully executed simulations” should have been the beginning of extensive cross-examination as touched on elsewhere herein. I will use it as a springboard to a different discussion. In a Perry Mason TV presentation Mason has his client write a check but sign it by tracing his own genuine signature. So if you wish to sign something and later successfully renounce it with support from some brilliant expert who employs cloned thinking patterns, carefully imitate one of your genuine signatures. No, it would not be a self-simulation of self-forgery, a non-existent thing as explained elsewhere herein, but a disguise by imitation of one method used by forgers. I doubt any of the self-styled “only qualified” handwriting experts could figure it out. However, I personally recommend you be an honorable and honest person and act with integrity in all things.

632. *People v Reynolds*, B196940 (Ct. App. CA 2 Dist. 2007)

Russell Bradford’s qualifications and testimony were stipulated to. He had taken an exemplar from Reynolds, compared it to the check on which payee’s name was altered to

Reynolds's, and he stated that Reynolds had not written the altered payee name.

COMMENTARY: Conviction for forgery was upheld since it was proven Defendant uttered the check, his having written it being unnecessary.

633. *In re Marriage of Sarchet; Sarchet v Sarchet*; A114901. (CA 1st App. Dist. 2007)

Wensen had testified that her mother had signed three documents relating to the purchase of a house. "However, Nancy Cole, a forensic document examiner, testified that the signatures of Wensen's mother on all three documents had been simulated by Wensen. Wensen subsequently admitted that she had signed her mother's signature, but testified she had her mother's permission to do so."

Cole testified to another issue: "The trial court rejected Wensen's claim that she had 'minimal income,' and concluded instead that the evidence supported Mark's contention that Wensen had access to significant assets in a Bank of America checking account held in the name of Wensen's mother. In this regard, the court credited testimony by Nancy Cole, a forensic document examiner, that Wensen had written all of the checks against this account by simulating (or forging) her mother's name."

COMMENTARY: At the beginning the case report states: "Wensen and Mark married in 1991, and separated in 1998. A judgment of dissolution was entered on December 14, 1999. The superior court reserved jurisdiction to resolve all other issues between the parties which has proven to be a very time consuming process." It then goes on to describe the woes of the divorce and its aftermath such as to inspire the rest of us to avoid divorce at all costs, because "all costs" might be the smallest price we pay otherwise.

634. *Underhill v Long Beach Memorial Medical Center, et al.*, B187644 (Ct. App. CA 2 Dist. 2007)

COMMENTARY: Though no court testimony was given nor was a formal challenge to reliability made, I believe this case sets forth admirable and mostly inoperative standards for all expert opinions, without which an expert should be dismissed and the expert's alleged evidence struck.

Underhill's son died after hospitalization for end stage cystic fibrosis. She sued for medical malpractice, but the court granted summary judgment to Defendants since there was no triable fact as the son could not have recovered.

An expert opinion needs a sound foundation. "For example, an expert's opinion based on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors [citation], has no evidentiary value [citation] and may be excluded from evidence. [Citations.] Similarly, when an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an 'expert opinion is worth no more than the reasons upon which it rests. [Citation.]" (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1116-1117 (*Jennings*).)"

"Based on my education, training, experience, practice and review of the materials

to date, it is my expert opinion that Dr. Nussbaum did contribute to the injuries and damages alleged by plaintiff.” But hard facts and reliable theory seem to be required, though most often are asked for as based on education, etc.

The bottom line as it were is: “An expert declaration offered in connection with a motion for summary judgment cannot ‘provide only an ultimate opinion, unsupported by reasoned explanation.’ (*Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 525.) ‘[A]n expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based.’ (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510.) The trial court did not abuse its discretion by excluding paragraph 14 of the Gustin declaration.”

Two other expert declarations for Plaintiff were struck: “The declaration of document examiner Jess Dines questioned the authenticity of Christian's medical records; plaintiff's declaration claimed that Christian's records were ‘altered, forged, falsified, and with missing pages’; and Frederick Baisley, RN, concluded that the medical records were ‘altered and with missing pages.’ The trial court struck all three declarations on the grounds that they were untimely filed and served, and that they were filed by plaintiff herself, and not by her counsel.”

2008

635. *Cardet v Burlison, Jr., et al.*, B198625 (Ct. App. CA 2 Dist. 2008)

“Defendants further claim that the testimony of Bruce R. Greenwood (Greenwood), their handwriting expert, establishes that Cardet endorsed two checks and thus received an additional \$217,166. Based upon this evidence, according to defendants, ‘[a]s a matter of law,’ the jury verdict contradicts the evidence. We disagree.”

COMMENTARY: As a matter of fact, it seems the court of appeals disagreed on everything with Defendants since Cardet prevailed on just about everything except pretrial interest.

636. *Castagna v City of Seal Beach*, Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. G039084. (2008)

Plaintiff, a police officer with City of Seal Beach, had testified that he witnessed someone sign a document. He was dismissed on a finding that the signature was a forgery and thus he had committed perjury. He sued. Four document examiners testified at trial. James Black and Connie Brinker testified the signature was false, supporting a finding of forgery. Glen Owens and Michael Gryzik testified it could not be determined whether the signature was genuine or false. The trial court gave credence to the latter two and thus ruled in favor of plaintiff, a ruling upheld on appeal with costs awarded to plaintiff.

The case report reads like a report on a debate between handwriting experts as the reasons pro and con are related while the retorts by Owens and Gryzik end the debate.

However, “qualifications” seem to have been the deciding factor in the trial court’s preference for the opinion of Owens and Gryzik. Discussed at modest length is the testimony of these two about the qualifications of the former two and of their mutual admiration for each other’s status as experts. On the contrary, Brinker’s background in graphology is given most shrift in her regard while Black’s alleged lack of formal training is emphasized in contrast to the other two examiners.

COMMENTARY: The case report makes interesting reading (and for testifying experts maybe a must reading) for two factors. First, it gives an excellent example of judicial reasoning. Whether or not one approves of this reasoning is almost incidental to the fact that one must appeal to and satisfy it if one is to be an expert witness. Second, it ranges over many elements that a handwriting expert should consider in such examinations. No matter how solid your evidence in support of your opinion, fail to consider one factor and it can become either cause or excuse to discount your testimony.

Owens and Gryzik gave testimony denigrating the qualifications of Black and Brinker, who did not return the disfavor. The former two had the advantage of Brinker who, being a member of NADE, was under the prohibition of NADE’s Code of Ethics not to engage in such. It is at least contrary to Federal case law, though I do not as of now know of any relevant California case law. In any case, I consider it to be, if not unethical for all expert witnesses, at least in very bad taste. Further, Owens and Gryzik were merely bolstering each other’s status, first by being haughty towards Black and Brinker and second by being mutually self-admiring. They also agreed on the peculiar persuasion which is pervasive among large numbers of handwriting experts, that knowledge of handwriting examination requires ignorance of handwriting analysis. Peculiar logic, yes, but effective marketing.

Later, I revisited this case and added these comments. Extensive factual observations are credited to Black and Brinker, while virtually none to Owens and Gryzik. If a court is going with the self-praise of an expert, I guess there is no need for the fact finder to bother with relevant, observable and verifiable physical facts. Secondly, the two mutually admiring experts pretty much waved the facts away. Since the judge admired them so much, though seemingly not quite as much as they admired themselves and each other, we can assume that, if they had had verifiable facts and reasonable theories to support their opinion, these would have been stated.

637. *Enpalm, et al., v Yadegar, et al.*, B201175 (CA App. 2 Dist. 2008)

COMMENTARY: “Plaintiffs’ own expert, David L. Oleksow, testified that he found no evidence that Trial Exhibit `137’ was a forgery or the product of any form of manipulation and rendered no opinion whatsoever as to the authenticity of the signatures on the document.”

638. *Harman v California Federal Bank*, B183480. (CA Ct. App. 2 Dist. 2008)

Two document examiners testified, and the following is all that is said of the two.

“Jess Dines, a document examiner, testified it was highly probable the 90 questioned documents he examined were not written by Harman based on five exemplars of Harman’s signature he was provided.

“Frank Hicks, a document examiner, was skeptical that an opinion could be rendered based on only five exemplars as Harman’s expert had. Hicks used 49 examples. The great majority of the signatures Hicks examined agreed to some extent with the known signature. If the person writing the signature was on medication, the signature might appear to be a forgery.

“Harman contends she presented independent evidence of forgery, consisting of evidence that checks were paid to Brad Cates and the memorandum dated July 6, 2000, that acknowledged the existence of forgeries. Harman notes the bank reimbursed her for one of the forgeries in the amount of \$729.87, and the bank’s document examiner testified that 63 percent of the checks he reviewed either probably were written by another person or there was not enough information for a definite conclusion. Also, of all the withdrawal slips he reviewed, he could not offer a definite conclusion as to the author as to 52 percent of them.”

COMMENTARY: I believe it is a fair inference to say Dines was Harman’s document examiner and Hicks the bank’s. I would share Hicks’ skepticism about the “highly probable” opinion Dines developed with only five exemplars. A handwriting expert should be wary when one’s own client cannot come up with more than five exemplars by the client while the opposing party comes up with 49. Since the jury ruled on all issues save one in favor of the bank (that one apparently did not benefit Harman financially), Hicks seemed to have given better testimony for Harman than Dines himself had.

639. *Lax Master Limousine Services, et al., v Ahmadpour, et al.*, 2d Civil No. B192011 (CA App. 2 Dist. 2008)

“Both sides appeared with counsel and presented evidence at the hearing. Appellants’ expert witness, graphologist Cynthia Norris, testified regarding her questioned document examination. Norris concluded that Ershadi had signed the challenged documents. Ershadi testified that he did not.”

COMMENTARY: Ahmadpour, et al., lost at trial where the court ruled the disputed documents were forgeries. This was upheld on appeal. No further information is provided about Ms. Norris or her opinion.

640. *Estate of Willis W. Lazelle; Keffer v Hacker, et al.*, F053210 (CA 5 App. Dist. 2008)

Document examiner Manuel Gonzales testified that decedent’s signature on the will was probably false. It was admitted to probate.

COMMENTARY: Given what I have heard of Gonzales’ reputation and the observations he relied on, my guess would be another forgery prevailed.

641. *Estate of Yvonne Paul, Deceased. Henry Stevens, Petitioner and Appellant, v Yolanda Paul, Objector and Respondent*. A120879. Court of Appeals of California, First Appellate District, Division Two. November 7, 2008.

Patricia Fisher testified to qualified opinion that decedent had not signed deed of her house to Yolanda, her daughter. Trial court found testimony of three daughters to the opposite persuasive and that exemplars Fisher used had not been sufficiently proven genuine. John Owen was not permitted to testify since the original deed had not been made available to Fisher though Owen used it.

COMMENTARY: One cannot infer that it was Owen's doings that Fisher had not seen the original. However, his presumed opinion prevailed. There are, it seems, several with names similar to the document examiner, such as a John Owens who wrote a book *Personality Mapping*.... One must be most cautious in researching on the Internet, since so many folk have similar names and engage in similar activities, while so much information is incorrect anyway.

642. *People v Howard*, E042513. (CA Ct. App. 4 Dist. 2008)

Defendant produced two letters he claimed came from one of the women he was accused of beating: "A document examiner testified that in her opinion, the handwriting in the two letters Arnett had purportedly written to defendant while defendant was in custody was not consistent with exemplars of Arnett's handwriting. A handwriting exemplar taken from defendant in court appeared to be distorted and not written naturally; defendant had taken about 35 minutes to write two pages. The document examiner was not able to reach a conclusion as to whether the letters were consistent with defendant's exemplar. However, the handwriting on the letters was consistent with documents in defendant's cell signed with defendant's name, and the document examiner formed the opinion that the letters had been written by the same person who had written the documents found in defendant's cell."

Conviction on 13 counts "along with true findings on associated enhancements" was affirmed.

COMMENTARY: "Not consistent" is a handy way to say anything and nothing with the same phrase at the same time. Not consistent in color of pen used? Not consistent as in same place, or same time? Not consistent in that it was the same writer but written in different languages? Ask the witness to say precisely what the inconsistency is, asking in such a way as to get just one inconsistency. Express thanks and drop that subject. It would take little imagination to mention in your final argument how that one inconsistency proves nothing. After all, we only need write a word twice to have more than one inconsistency of some sort.

643. *People v Lewis*, D051661. (CA 4 App. Dist. 2008)

In a trial for grand theft by an employee, "The defense presented several witnesses. A forensic document examiner testified she could not identify or eliminate Lewis as the person who wrote 12 refund slips." Conviction was affirmed.

COMMENTARY: The weakness of the expert evidence offered might suggest defense counsel was hard put to offer an effective and persuasive defense.

644. *People v Morgon*, B204856. (CA 2 App. Dist. 2008)

In a prosecution for check forgery, “Russell Bradford, an expert document examiner, testified for the defense that in his opinion, none of the checks were endorsed by defendant, but check Nos. 8125, 8127, and 8129 were endorsed by Galaz. Bradford could not determine who signed several of the checks as payor. He had defendant sign his own name and Galaz’s name as an exemplar, but did not have Galaz provide any exemplars.”

COMMENTARY: California has adopted the *post litem motam* rule for which the U.S. landmark case is *Hickory v U.S.*, 151 US 303, 14 Sup Ct 334, 38 L.Ed. 170 (1894). Since defendant was Bradford’s client who was helping to prove his own assertion, the testimony would seem to be legally inadmissible. Handwriting experts often violate this rule with impunity. See my paper, “The making of one’s own exemplars; the *post litem motam* rule as illustrated by California,” 21 *Journal of the National Association of Document Examiners*, 1-5 (Spring 1998).

645. *SP22, Inc., et al., v Yurdumyan, et al.*, B190193 (Ct. App. CA 2 Dist. 2008)

Dr. Valerie Aginsky testified to differences in inks on questioned documents and provided statistical reasoning to support his opinion. Defendants objected that his statistical testimony was novel and should have been barred under Frye general acceptance standard.

“[T]wo physicians testified at trial that their signatures had been forged on several prescription documents prepared at Arden, and that a handwriting expert testified Ovasapyan had forged portions of several such documents. Based on that evidence, we conclude that even if error occurred by admitting Aginsky’s testimony, the error was not prejudicial.”

COMMENTARY: The handwriting testimony is mentioned as if it were incidental but is credited with being central to the issue of the authenticity of the documents. It is noteworthy that Aginsky made an astute statistical argument to establish a high, but not definite, probability to his opinion. My impression is that the man is both masterful and modest in his claims, which is refreshing in an ink expert.

2009

646. *Deneal v Shaver*, G040688 (Ct. App. CA 4 Dist. 2009)

Plaintiff filed numerous motions to have Defendant and Defendant’s attorney be made to undergo drug testing and other diagnostic tests. These were all denied, as was one to have Defendant’s handwriting expert undergo drug testing. Plaintiff was ruled a vexatious litigant and summary judgment granted to Defendant with costs.

COMMENTARY: The handwriting expert had submitted a declaration in support of motion for summary judgment, stating Plaintiff’s signature on a work order was genuine,

which Deneal had denied, claiming work on his automobile had been without authorization.

647. *Enayati v Enayati; Faridian, et al., v Enayati, et al.*, B196597, B205050 (Ct. App. CA 2 Dist. 2009)

Donald Fandry was document examiner for Defendant/Appellant. “Fandry agreed that if someone has a health problem, there may be wide variation in the person's signature.” However, “The court did not believe the testimony of Hesameddin, Donald Fandry, Cyrus Mody, or Pedram Enayati. In a court trial, the trial court is the sole trier of witness credibility. We must accept the court's findings that some witnesses were believable, and others were not. The court did not tend to believe the testimony of family members, whose testimony was emotional and biased.”

COMMENTARY: Usually an agreement such as Fandry gave comes during cross-examination. It must not be left where the cross-examiner was satisfied with the agreement. On redirect the witness must be given a chance to explain exactly how the writer's particular health problems affected the writing in question and the theoretical and observational bases for saying so. If you do not trust your expert to give a credible explanation of it all, then you should have gotten one knowledgeable enough to have won your trust. A sharp expert would have already obtained pertinent health information by requesting medical records of any health conditions, injuries, medications, or addictions, then reviewed the document examination and medical literature for reports and research on the effects on handwriting by the specific factors involved.

648. *K.C. Multimedia, Inc., v Bank of America Technology & Operations, Inc., et al.*, 171 Cal. App. 4th 939, 90 Cal. Rptr. 3d 247, 2009 Cal. App. LEXIS 276 (6 App. Dist. 2009)

At *6: “Among the issues that appellant pressed at trial was its claim that Chun's signature on the 2000 contract had been forged. Both sides presented handwriting experts (forensic document examiners) to testify about this claim.”

COMMENTARY: That is the entire discussion of the expert testimony.

ADDED COMMENTARY: After I wrote the above commentary, I retrieved the version of the decision before it was “CERTIFIED FOR PARTIAL PUBLICATION.” One portion left out of the published version is this:

“In this case, the record supports a finding that appellant fabricated evidence and presented a false forgery claim. As the trial court explained at the hearing on the fee motion: ‘I believe that a central issue in this case had to do with the November 2000 contract. I think the way the case was presented, it was clear someone or some party was dishonest. [¶] I reviewed in my mind the testimony of the experts. I did not find the plaintiff's expert, handwriting expert persuasive based on credentials or lack thereof, and the comment she made in support of her conclusion. [¶] By contrast, I found the testimony of the defense expert to be very persuasive. I found that witness to be extremely well qualified. And I came to the same conclusion. I believe the jury had become [sic] that the allegation of forgery was just not true. It was something that was made up.’ The court cited

appellant's bogus forgery claim as 'the primary reason, among others,' for determining that respondents were entitled to statutory fees under section 3426.4."

For our purposes we would like to know the names of the experts, their relative qualifications and the referenced comment made by plaintiff's expert. However, the two versions do remind us all that appeal justices are necessarily like the rest of us in so far as they tend to limit comments to what they see as important to their position on an issue.

649. *People v Ahmadpour*, B208600 (Ct. App. CA 2 Dist. 2009)

Defendant called James Uyeda, his former attorney, to testify as to the writer of signatures based on a comparison, not from personal knowledge of the purported writer's handwriting. He was not qualified as an expert and was testifying only from comparison which only an expert witness may do.

COMMENTARY: The both Defendant's former and current attorneys did not know the applicable rule. We expert witnesses might consider at least being aware enough of the rules that govern our work so we can ask the attorney/client about them. Of course, the attorney must first involve an expert in order to have expert questions brought up.

650. *People v Baro*, F054461. (CA 5th App. Dist. 2009)

"James Blanco, a forensic handwriting expert, compared Henderson's handwriting on the Better Business Bureau complaint to the single word 'FRAUD' written on the other document. Blanco concluded that it was highly probable or virtually certain that the person who wrote the full page of writing was the person who wrote the word 'FRAUD.'"

"On cross-examination, Blanco said he did not know what the word 'FRAUD' referred to or when it was written. He also admitted it was very common for handwriting experts to disagree."

COMMENTARY: It would be instructive to know how the opinion was arrived at. A single word hardly meets standards for sufficient questioned material to be so very sure of oneself.

651. *People v Hamlin*, 170 Cal. App. 4th 1412, 89 Cal. Rptr. 3d 402, 2009 Cal. App. LEXIS 159; modified and rehearing denied, 2009 Cal. App. LEXIS 300 (3 Dist. Cal. App. 2009); certiorari denied, California Supreme Court... Habeas corpus denied, *Hamlin v Yates*, No. 2:11-cv-00604-JKS (U.S. DC E.D. CA 2012)

S, wife and alleged victim of torture by her husband the defendant, had handwritten two long letters. The first to defendant stated that S's father and his friend, not her husband, had sexually molested and maltreated her. The second to a law enforcement detective said the contrary. S testified that defendant forced her to write the first letter and she freely wrote the second. If the jurors believed the first letter, defendant would be acquitted; if the second, he would be convicted. They convicted.

Defendant had proffered expert handwriting testimony by Marcel Matley that the first letter was written freely and spontaneously, showing no stress and thus no duress,

while the second had been written under severe stress consistent with duress. The prosecution brought an *in limine* motion to block the expert testimony, and the motion was granted because the testimony would not have assisted the jury in any material way, would be an undue consumption of time, and would distract the jury with irrelevant issues. Further, though the witness “had some expertise” in the matter, he had been qualified only once as an expert in stress and handwriting and testified only three other times on the issue.

There was no abuse of discretion in not allowing the testimony.

COMMENTARY: Since I was the expert witness, I offer comments based on personal experience, a certified transcript of the testimony at trial and the published decision by the Court of Appeals. I hope this may assist you in a similar situation. The matter is treated extensively in the case report, but critically important information is left out. The evening before the hearing defendant, a licensed attorney, and I spent hours reviewing testimony for the jury. The prosecutor sprung the motion at start of trial the next morning, and defendant was not given a moment to instruct me on the altered situation. I testified blind as to the issue of the motion.

Not mentioned in the case report is the annotated bibliography that was a significant part of my testimony. It included Albert S. Osborn’s teaching of how anxiety, stress from fear of discovery, changes the forger’s handwriting, causing similarities to certain indicia of forgery. Thus, I could say that handwriting experts routinely consider stress in handwriting. The judge in his ruling and the Court of Appeals in its somehow skipped over this fact. The bibliography ended with contemporary research reported in the med/psych literature that confirmed what was reported in the literature of document examination.

The case report mentions testimony that the fact, but not the cause, of stress can be determined from the handwriting. Though this is true, it was illogically used to justify barring the testimony. Correct logic is this: The letter written to defendant had no indicators of stress, so it definitely was not written under duress or by dictation. The second letter was far more stressed than S’s writings made in the ordinary course of social life, so it could be reasonably explained by duress. All this would have addressed the jury fact at issue, contradicted the prosecution’s theory, and impeached S’s testimony.

The case report further mischaracterizes the nature of the writings produced in the ordinary course of social life. These clearly established the ordinary degree of stress in S’s writing, giving a benchmark for measuring an extraordinary degree of stress in the second letter; and they established an extraordinary freedom from stress in the first letter. All this provided Hamlin’s sole defense against some evidence that went directly to the charges against him. Yet the court said the testimony was irrelevant.

The *in limine* hearing, during which time the jury was isolated in the jury room, ended with a ruling that jury testimony would be very time consuming. The hearing took two to three times as long as jury testimony would have.

In this collection of case law, commentaries assume that courts represent things correctly. Is there an expert witness or a trial attorney who would defend this assumption as a safe, unfailing guide to the truth? However, we must treat case reports that way in order

to understand judicial logic, and at times illogic. After all, these rulings rule our lives as expert witnesses and litigants. It behooves us to be simple as doves when dealing with judges but shrewd as serpents when preparing to deal with them. In the *Hamlin* case the serpents unfortunately were all on the side of the prosecutor. We had not considered the possibility of the ambush of an unnoticed *in limine* motion that won approval from the trial judge. The judge and prosecutor had long since been given full notice of the proposed testimony along with a written report.

I hope this story will help you master the lessons about litigious fire without being pedagogically or combat burned.

652. *People v Lopez*, F053672. (CA App. 5 Dist. 2009)

Lindsay Police Department detained defendant during an investigation in late 1990. As part of the investigation some papers were sent to questioned document examiner James Prouty for examination. Defendant was released. In 2002 the police began investigating cold murder cases, and defendant was arrested for the murder of his wife. In the course of the investigation James Blanco was retained to examine documents and identified defendant as writer of some of the incriminating documents. At trial the defense called Prouty to testify that he could make no such identification. Frank Hicks, another questioned document examiner, could only say defendant probably filled out a motel registration card. The murder conviction was affirmed.

COMMENTARY: I wonder whether the defense failed to make the evidence from its document examiners forceful and clear enough, explaining the most cogent statements and emphasizing its more impressive enlarged exhibits. I have seen trial attorneys soft-pedal their potentially powerful evidence while the others side plays hard ball with every vague hint of evidence.

653. *People v Ontiveros, et al.*, 2009 Cal. App. Unpub. LEXIS 6083 (Cal. App. 2009)

COMMENTARY: Defendants' conviction involving "a real estate pyramid scheme" was affirmed. A handwriting expert testified to a forged signature on a deed.

654. *People v Reyes, et al.*, 178 Cal. App. 4th 1183; 101 Cal. Rptr. 3d 109; 2009 Cal. App. LEXIS 1747 (CA App. 4 Dist. 2009)

Reyes and three others kidnaped a man to extort money. They held the victim overnight at a motel. "Reyes's handwriting expert testified the signature on the Travelodge registration form was 'most likely' someone else's, though the expert acknowledged it was 'possible' Reyes had signed the form."

COMMENTARY: To say that it is "possible" that someone wrote something is fraught with difficulties. The word "possible" has so many possible meanings that it is a certainty that parties will interpret it to suit their own theses. When asked was it possible that an individual wrote a disputed handwriting, the preferable reply by the expert is to switch the answer over to the improbability of that being the fact. Further, the handwriting

expert knows only of the handwriting evidence the expert has developed but not of the many other factors that might make it impossible for any given individual to have made the disputed writing.

655. *People v Rutterschmidt, et al.*, 176 Cal. App. 4th 1047; 98 Cal. Rptr. 3d 390; 2009 Cal. App. LEXIS 1361 (CA App. 2009)

“Questioned documents examiner William Leaver examined and tested the signature stamps from Hollywood Rubber Stamp Company; he opined that Vados's signature on the insurance applications had been stamped. He also reviewed examples of Golay's handwriting and opined that she had likely written most of the notations of Vados's identifying information on a Post-it note found in her residence at the time of her arrest.”

COMMENTARY: In a murder case, Defendants were two women and the victims were two men. One might use this to support Rudyard Kipling's contention that “The female of the species is more deadly than the male.” However (or “unfortunately,” depending on one's bias), the vast majority of murder cases I have come across have male perpetrators.

656. *People v Tedeschi*, G040661. (CA Ct. App. 4 App. Dist. 2009)

“Tedeschi offered the testimony of Sheila Lowe, a handwriting expert. Lowe opined N.H. wrote the letters Tedeschi received while he was in jail.” N.H. was one of the women against whom Tedeschi was convicted of committing sexual offenses. Tedeschi testified he did not know why N.H. sent him the love letters. Handwriting expert, Ruth Creed, offered the opposite opinion for the prosecution.

COMMENTARY: Ms. Lowe was a member of NADE but did not renew her membership in 2013. She is the successful author of the Claudia Rose Murder Mysteries. The protagonist, Claudia, solves murder mysteries with her handwriting expertise.

657. *Thee Aguila, Inc., et al., v Tseheridis*, G040066 (Ct. App. CA 4 Div. 2009)

Attorney for Tseheridis contended there was a violation of discovery in that the key documents were made available only in copy and his expert was never able to examine originals. Attorney for Thee Aguila began with the same experience except he picked up the phone and asked if his document examiner, Andrea McNichol, could see the originals, which request was accommodated. There were other contentions which culminated in a request for sanctions against Tseheridis, which was denied since, though his appeal lacked merit, it did not descend to the level of offense that justified sanctions.

COMMENTARY: It is one of the cases that offer more attorney wrangling than usual; I mention only the one on point for document examination.

2010

658. *Brenlar Investments, Inc., et al., v Lynch*, A121044 (Ct App CA 2010)

COMMENTARY: David Moore testified for plaintiff that certain signatures and initials were false and that some were “more likely than not” written by Lynch.

659. *Jones v Jones*, No. G042549. (Court of Appeal, 4th Appellate Dist., 3rd Div., 2010)

The issue was whether Defendant, decedent’s wife, was removed as a trustee on the family trust. Plaintiff, decedent’s son, retained James A. Black as document examiner who concluded the signature in question was genuine. He had examined original documents and a number of exemplars. Defendant retained Jess E. Dines who concluded the opposite. However, Dines did not examine originals and used far fewer exemplars, admitting in testimony that Black’s method was preferable. The judge gave full credence to Black’s opinion.

COMMENTARY: Dines is the author of what may be the worst book in forensic document examination, an opinion he knows I hold and have made public.

660. *Martinez v U.S. Bank, N.A.*, No. E048474 (Ct. App. CA 4 Dist. 2010)

There was a question of forgery in deeds conveying the property in question. “According to an expert in handwriting analysis, Martinez’s signatures on the 2004 and 2005 deeds and deeds of trust (collectively the Deeds) were genuine. Sanchez’s signatures, however, had actually been written by Martinez. It was undisputed that the notaries’ signatures and seals on the Deeds were all forged.” Since Martinez’s signatures were genuine, he was bound by the provisions of the forgeries. Since he was the forger, he was estopped from claiming the benefits of a forged document being void *ab initio*.

COMMENTARY: How nice if such were the outcome for all forgers.

661. *In re Estate of Moon*, No. C061192. (CA Ct. App. 3 Dist. 2010)

COMMENTARY: “David Moore, a forensic document examiner, examined the 2004 will. According to Moore, the signatures on page one of the 2004 will were not written by the person who signed the second page.” The trial court invalidated the 2004 will for other reasons and admitted an earlier will to probate.

662. *Neman v Federal Deposit Insurance Corporation*, No. B212246. (CA 2 App. Dist. 2010)

COMMENTARY: James Blanco testified about a signature.

663. *People v Estrada*, No. G041925. (CA 4 App. Dist. 2010)

“Cesena [defense counsel] put on a reasonable doubt defense. Frank Hicks, a forensic document examiner, testified ‘[defendant] probably did not’ make the writings on the pay/owe sheets in the notebook found in defendant’s bedroom.”

COMMENTARY: The rest of the case report is a more complex discussion of a claim of ineffective assistance of counsel which did not persuade the court of appeal. “Pay/owe sheets” are coded records of which customers already paid for purchases of illegal drugs and of which ones had received the drugs but not yet paid.

664. *People v Green*, No. F059409. (CA Ct. App. 5 Dist. 2010)

“A Department of Justice questioned document examiner opined there were ‘indications’ that appellant had signed Indio’s name to the check and the loan request form. Detective Hale testified that handwriting in a notebook recovered from appellant’s home ‘resembled the signature of Barbara Indio on the [loan] documents.’”

COMMENTARY: Such expert testimony could hardly convict anyone, so there was other evidence among which was that the victim of check and loan fraud had testified none of the signatures in question were hers nor had she ever seen defendant until the trial.

665. *People v Groce*, No. D055456 (Ct. App. CA 4 Dist. 2010)

COMMENTARY: Handwriting expert evidence was received.

666. *People v Nash*, D053238. (CA 4 App. Dist. 2010)

Document examiner David Oleksow “was reasonably certain” defendant wrote incriminating notes. Later it is said that he “testified there were indications the handwriting belonged to Nash.”

COMMENTARY: This case points up the virtue of a standard terminology, since one can be reasonably certain of any degree of probability being correct, while “indications” does not mean an identification in ASTM terminology but only basis for a reasonable suspicion. On the other hand, ASTM terminology for expressions of opinions by document examiners provides no standard and objective guideline for selecting one term over another.

667. *Robinson v Roberts*, No. A124373 (Ct. App. 1 Dist. 2010)

“[Robinson’s] expert—a banker—testified that the endorsement signature was such that he would have made some inquiries before cashing it. He was not a handwriting expert and did not feel qualified to testify whether or not the signature was authentic. By contrast, Roberts’s document expert did testify that Robinson’s signature was authentic.” Roberts prevailed.

COMMENTARY: It is not said whether the banker’s expert modesty was solicited on direct- or cross-examination. I hope it was on cross.

668. *Sounds by Dave, Inc., v Fedrizzi, et al.*, No. C062119 (Ct. App. CA 3 Dist. 2010)

Plaintiff’s handwriting expert said Defendant had altered some bank deposit slips, while Defendant’s expert said she had altered none of them.

COMMENTARY: Defendant appealed she had not been given enough of a win. The

Court of Appeals gave Defendants about all the wins they could have wished for. Results from other appeals warn us that sometimes it is best to take half a loaf and at others just a few crumbs rather than risk having to return all the bread plus some more.

669. *In re Estate of Wisner; Osband, Petitioner and Appellant, v Raypholtz, Objector and Respondent*. No. F058073. (CA 5 App. Dist. 2010)

Forensic document examiner, James Tarver, testified to whether signatures of decedent were assisted or guided or false.

COMMENTARY: A case of routine admissibility for a less than routine issue that handwriting experts face not too often. As far as I can recall, I testified only twice on the issue of assisted signatures, and those regarding the same decedent. His divorced wife first attempted to keep proceeds from two large but forged checks, claiming they were gifts. She asserted that she had assisted the signing after I had testified in deposition that the signatures were false. Her description of how the assisting took place would have made the final result physically impossible. On the second trial she sought proceeds of insurance payments as wife at the time. The two check signatures, that were found by the judge in the first case to have been written entirely by her, were used as exemplars to show she also signed decedent's name to the letter supporting her claim in the second case. Additionally, exemplars of her writing his name in the ordinary course of things also showed her peculiarities in writing his name, however much she had developed pictorial similarities.

An excellent research project on assisted, guided and inert-hand signatures is to be found in *Journal of Questioned Document Examination*, Vol. 8, Special Edition, 2000.

2011

670. *People v Ortega*, No. F057431. (CA App. 5th Dist., 2011)

"Larry Stewart, a forensic scientist and handwriting expert, testified that he had reviewed certain handwritten letters. He opined that they were all written by the same person."

COMMENTARY: There are at least four follow-up proceedings into 2015, the result of which seems only to keep court personnel employed.

671. *People v Porter*, No. F057076. Court of Appeals of California, Fifth District. Filed April 5, 2011.

COMMENTARY: Patricia Fisher testified for defendant that elderly murder victim had signed four exhibits. Defendant's multiple convictions, including murder of elderly man, were affirmed.

672. *In re Estate of Richards; Duffer v Richards, et al.*, No. B226261. (CA Ct. App. 2 Dist. 2011)

Howard C. Rile, Jr., was document expert for petitioner, Duffer. The case report

indicates that he did a thorough examination of all aspects of the two wills in question. Regarding the questioned authenticity of decedent's signatures, Riles' opinion is stated thus:

"His evaluation of the signature was based on standards developed by the American Society of Testing Material with a nine-point scale for evaluating signatures. He testified at one end of the scale, a 'one' would be a positive opinion that the person indeed executed the questioned document. On the other end, an opinion of 'nine' is a definitive conclusion the person did not execute the questioned document. In between, the scale offers an option of 'five' or a conclusion the examiner could not determine the questioned document contained a particular person's signature. Mr. Rile's opinion was that it was as likely as not that decedent or someone else executed the first document."

Lynne Variano was document examiner for contestants, but since Duffer did not carry his burden of proof, she did not have to testify.

COMMENTARY: I believe there is a good chance the court did not fully understand Riles' opinion. For example, if his opinion were "that it was as likely that decedent or someone else executed the first document," he would only have concluded to what the question posed to him was. Given the thoroughness with which it is reported he examined the documents, it is reasonable to believe his statement of opinion would have been equally thorough. Additionally, he would not have explained the ASTM terminology as a 1 to 9 numerical scale which, it seems, was the court's take on it. This, then, is another opportunity to repeat that it may not always be wise to take case reports on face value.

Ms. Variano is a member of AFDE.

2012

673. *Beverly Hills Triangle, LLC, et al., v AYN Pharmacy Corp., et al.*, No. B230188. (Ct. App. CA 2 Dist. 2012)

"Both sides offered testimony from forensic document examiners. Respondents' [Beverly Hills Triangle] expert, Barbara Torres, compared the signature on the August 15 letter with other Delijani signature exemplars, and conducted additional tests. Torres opined 'that the person who produced the exemplar documents may not be the same person who produced the questioned signature.' [2] Appellants' [AYN Pharmacy] opposing expert, Frank Hicks, testified that he thought Torres had done an 'excellent job' on the scientific portion of her analysis, but he disagreed with her conclusion. Hicks opined that the 'Delijani signature on the questioned document . . . was probably prepared by the writer of the known signatures that were submitted . . . as genuine signatures of Mr. Delijani.'

"The parties submitted a special verdict to the jury. The first question asked the jury to decide whether the signature on the August 15 letter was authentic. If the jury concluded it was not, they were directed to answer no further questions. The jury concluded the signature was not authentic."

Footnote 2 reads: "[2] In addition to conducting a forensic analysis of the signature

on the August 15 letter, Torres also noted other aspects of the letter that ‘stood out.’ One such factor was inconsistent capitalization of words such as ‘lessor,’ and grammatical errors.”

It was not error to deny the *in limine* motion to exclude testimony by Torres, the motion not being related to her competence but based on various legal challenges.

COMMENTARY: It is always commendable for an expert witness to acknowledge competent work by an opposing expert, though I suspect that trial counsel who retained the former expert would generally prefer the acknowledgment not be made at trial.

674. *In re Castro, People v Castro*, Nos. H036045, H034813. (CA App. 6 Dist. 2012)

It was ineffective assistance of counsel not to consult a handwriting expert on whether defendant had written a certain letter. The prosecution used to great effect the letter which defendant had denied writing. In an earlier case, the same defendant was acquitted when a handwriting expert had testified that he had not written the same letter.

COMMENTARY: The Court of Appeals makes an explicit point that defense counsel should at least have consulted a handwriting expert. Management at the legal assistance agency had denied funds for an expert, which makes one wonder whether the agency’s budget simply had insufficient funds to do its job.

675. *In re Marriage of Falcone & Fyke*, 203 Cal. App. 4th 964, 138 Cal. Rptr. 3d 44 (CA 6th App. Dist. 2012)

A document examiner testified that, using a false name, Kathey Fyke had signed proofs of service that were required to be signed by one not a party to the action.

COMMENTARY: I was waiting to testify on the same issue in a similar case, but the judge threw the complaint out due to plaintiff’s penchant for such violations of the rules.

676. *In re Estate of Stanley A. Griswold; Seiw Mee Griswold v Frank Griswold*, No. D058713. (CA 4 App. Dist. 2012)

Seiw Mee, age 41 and referred to as Sharon in the case report, visited here on a six-month visa, met Stanley, age 80, and they were married apparently within a month. That was 2000. In 2002 Stanley began divorce proceedings and signed an amendment to the family trust to reiterate his estate went to his sons and to add that he had made other provisions for Sharon. He died in 2006, and Sharon sought to invalidate the amendment on grounds of forgery so that she could share in the inheritance as wife. Sharon called Jess Dines who said it was highly probable that the amendment signature was false, while Frank called Sandra Homewood, a handwriting expert, who said the signature was genuine and that there was no indication of non-genuineness.

COMMENTARY: I will quote a segment from the case report and intersperse my own comments.

“As discussed above, the trial court concluded this case basically came down to a

battle of the experts [i.e., Dines and Homewood]. The court stated: ‘The question really is, which expert was more credible on the witness stand.’ The court found Homewood used more contemporaneous standards [i.e., comparison signatures] in her analysis. It also found Homewood’s training, education and experience was credible. It was not persuaded Dines had the proper training for a questioned document examiner.”

Based on Dines’ dreadful book, *Document Examiner Textbook*, he should be disqualified or at least discountenanced whenever he appears to testify. He knows my estimate of his book, since he threatened to sue me unless I withdrew my review when it first appeared, which I refused to do and invited him to proceed and sue me. I stated I would be co-counsel with my attorney solely that I might cross-examine him at trial. I have no idea where he might have learned anything that supports his claim to be a document examiner, not having ever seen his CV that I recall. And I shudder at seeing it.

“Regarding the effect of Stanley’s health at the time of the Amendment, the court stated:

“‘[A]t that time [Stanley] had been released from the hospital, and so the court logically would assume that he was in a weakened state, and given some time to regain his health, the strength of his signature would have improved along with his health. This episodic nature of his health I think was a factor that Mr. Dine[s] discounted unduly, so I think that an individual, as he becomes stronger, and as Miss Homewood testified, becomes more forceful in [his] signature.’”

In his book cited above, Dines discusses how health can affect handwriting, most inadequately and unreliably as is his wont in the book. To show that the poorest text can have a virtue, he cites my text, *Health and Handwriting*, though he gives no indication of having been mentally enriched by its quite substantive teachings. Related to the next quote from the case report, his text also mentions how blindness can affect handwriting. It seems on both issues that he might have forgotten the little he might have known back when he published his book.

“The court found illogical Dines’s testimony that it did not matter whether Stanley was wearing glasses when he signed documents. It also found incredible Dines’ testimony that it was not important what position the writer (i.e., Stanley) was in at the time of signing a document. The court found the signature on a December 7, 2002, correction deed, acknowledged by a notary public, was, in fact, Stanley’s signature and that signature was ‘markedly similar to’ the signature on the Amendment. The court concluded: ‘I’m satisfied that in this case [Stanley] did, in fact, execute the [A]mendment’”

In his book on page 136 Dines says: “*Body Position*. This may result in significant change in a handwriting.” Per usual, Dines offers no instruction how any given position might do so. As I have always, I recommend you expend neither funds nor reading time on the book unless you need to impeach the author. Certainly do not rely on it in any way as a guide or an authority. As stated previously, Mr. Dines knows these are my views since he wrote to me about them, and I retain the original file in the matter.

677. *People v Hawkins*, 211 Cal.App.4th 194, 149 Cal. Rptr. 3d 469 (CA App. 2012); Review denied by *People v Hawkins*, 2013 Cal. LEXIS 1370 (CA 2013)

“At the preliminary hearing, the magistrate heard defendant’s motion to suppress evidence. During the hearing, Deputy Macias testified that defendant consented, both orally and in writing, to the search that culminated in the seizure of evidence.

“After defendant’s handwriting expert opined that the signature on the written consent form did not match the exemplars of defendant’s handwriting, the prosecutor called Los Angeles County Sheriff’s Department Detective Adam Kirste to testify. The following exchange occurred during Detective Kirste’s testimony regarding the opinion of Melvin Cavanaugh, a Los Angeles County Sheriff’s Department Questioned Document Examiner: ‘[Prosecutor:] Okay. And in speaking with Mr. Cavanaugh, did he form an opinion, having looked at all of those signatures, as to whether they were all completed by the same person? [Detective Kirste:] Yes, he formed an opinion. [Prosecutor:] And what was his opinion? [Defendant’s counsel:] Objection, Your Honor, hearsay. [Trial Court:] It’s prop. 115.[9] So overruled on that basis. [Defendant’s counsel:] But this goes to my 1538.5 motion. [Trial court:] I know. It’s a prelim. Prop. 115 applies even to a motion to suppress. You filed it now, so it comes in.’”

COMMENTARY: My best understanding is that in California a preliminary hearing in a criminal procedure is one way to determine whether or not there is probable cause to hold defendant to answer the criminal charges. Proposition 115, passed by the voters as a ballot measure, permitted hearsay evidence in preliminary hearings in lieu of calling certain witnesses to testify in person. The provision does not apply to actual trial, only to the preliminary hearing.

678. *People v Thomas*, No. F056337. (CA App. 2012)

“Initially, the trial court agreed with the prosecutor that the poem at issue was relevant as circumstantial evidence of drug trafficking. The court, however, found its admission would be unduly prejudicial under Evidence Code section 352, unless the handwriting could be authenticated as appellant’s handwriting. Subsequently, the prosecution presented the testimony of a handwriting expert who opined that the writing in the poem was by the same person whose handwriting appeared on two forms the expert compared with the poem. Two county employees testified that appellant handed them these forms and that the handwriting on the forms was similar to other forms appellant had handed to them in the past. The court then allowed the prosecution to admit the poem and question Officer Blehm about its meaning and significance.”

COMMENTARY: The officer testified that drug dealers often write poems to brag about their accomplishments. Both experts and their evidence were properly admitted.

679. *Ragland v U.S. Bank National Association, et al.*, 209 Cal.App.4th 182, 147 Cal. Rptr. 3d 41 (CA App. 4 Dist. 2012)

COMMENTARY: Ragland claimed, and a handwriting expert testified, that her

signatures were forged on loan document in purchase of a house. In a complex of issues, defendants prevailed with the trial court while Ragland mostly prevailed on appeal.

2013

680. *Banyan Limited Partnership, et al., v Baer, et al.*, No. G046428 (Ct. App. CA 4 Dist. 2013)

Plaintiffs claimed Defendants had not repaid loans on five promissory notes. Plaintiffs at first only produced copies of the notes. A document examiner concluded from the copies that a key signature was cut-and-pasted. Six years into litigation Plaintiffs found the originals, which Defendants demanded be subjected to ink testing. The ink expert said the signatures on the notes were original ink signatures and of an age consistent with Plaintiffs' claims. Defendants then dropped all claim of forgery, which was one of the reasons the trial judge did not award attorneys' fees to Plaintiffs.

COMMENTARY: The legal ins and outs are a bit more complex than given here, and they might be of interest to anyone facing this kind of litigation, bearing in mind the case report is unpublished and may not be used as a precedent. Most important for our purposes are three points. First, having only copies of key documents can work against the honest claimant, yet businesses routinely destroy originals and keep only digital copies, often in very poor resolution. I believe the presumption of the law should be against any claimant who chose to destroy original documents or was careless in preserving them safely and in tact while they could be reasonably anticipated to be evidence in court some day. After all, that is why society has established the practice of creating original documents attesting to important matters.

Second, a document examiner, and probably any kind of forensic expert, must make the best call possible with the materials presented for examination. That the document examiner in this case came to an incorrect conclusion should not be used against this examiner nor examiners at large. I had a case where I had to examine a copy of logged entries. All physical observations from the copy supported a finding of falsity, but one look at the original cleared up the matter. Bleeding from one side of a sheet of paper to the other created the false impression.

Third, at times ink testing can be essential for resolving some issues, though my experience is that some ink testers make glib claims for what they can do and seem to have no intelligent understanding of how less expensive and non-spoliating tests might resolve the matter more effectively and efficiently.

681. *Estate of Taruk Joseph Ben-Ali; Golde v Wilburn, et al.*, No. A132979, 216 Cal. App. 4th 1026, 157 Cal. Rptr. 3d 353, 2013 Cal. App. LEXIS 422 (CA Ct. App. 1 Dist. 2013)

The expert testimony is summarized thus: "Respondent's forensic document expert, David Moore, testified he believed with a high degree of certainty Taruk's signature on the will was authentic based on comparing it with known signatures of Taruk. He further

believed Wilburn's signature was 'probably' genuine based on comparison with one known signature by Wilburn in which she signed as 'Wendy Ben-Ali.' Appellants' forensic document expert, James Blanco, opined it was 'highly probable' the signatures of Taruk and Wilburn on the will were not genuine."

The trial court rejected Blanco's opinion and adopted Moore's. Wilburn was one of two required witnesses to the will, but she denied witnessing the will, though she had signed something for Taruk. Regarding the other required witness to the will: "The handwritten name and address of the second purported witness were illegible, and the identity of that person has never been determined." Since only one witness was able to be identified and verified, the will did not meet legal requirements so that the Court of Appeals reversed and remanded, ordering the will not be probated.

COMMENTARY: Taruk's father, Hassan Ben-Ali, had forged Taruk's name on a number of documents, but Moore was not informed of these. It appears his client left him in as much darkness as possible, a very poor decision for any client to do to a professional whose best work product the client needs. The reversal had nothing to do with the comparative merits of the two expert witnesses but solely due to lack of the will's meeting all statutory requirements. In fact, the appeal decision could have been no more than two pages since the one issue decided the entire matter. Blanco lists this decision on his web site under "Court Decisions, Endorsements," which is incorrect but understandable due to the difficulty in following a complex decision.

682. *Coliseo Housing Partnership v Poz Village Development, Inc.*, No. B236713 (CA Ct. App. 2 Dist. 2013)

COMMENTARY: It only states that Defendant had James E. Blanco testify, but the opinion offered was inconclusive and supported the likely genuineness of the disputed signature.

683. *Long, et al., v Onewest Bank, FSB, et al.*, No. G046402 (CA App. 4 Dist. 2013)

"To support their forgery theory, the Longs submitted a declaration by Beth Chrisman, a forensic document examiner. She explained she examined 33 documents Stotts purportedly signed on MERS's behalf and concluded the signatures revealed more than one person, and possibly as many as six people, signed Stotts's name on the documents because there were 'at least six distinct signature formations.' Two of the documents Chrisman examined were the Assignment of Deed of Trust and a declaration Stotts filed on MERS's behalf to obtain relief from the automatic stay when the Longs filed for bankruptcy protection. Chrisman concluded '[t]wo separate individuals authored the name of Roger Stotts on [these] two documents [and t]herefore, one if not both are forgeries.'

"Chrisman, however, never opined Stotts's signature on the Assignment of Deed of Trust is a forgery. She conceded she did not 'examine authenticated, known signatures of Roger Stotts' and could not determine which documents were signed 'by the "real" Roger Stotts' without a known signature. Accordingly, although Chrisman opined more than one

person signed Stotts's name on the documents she examined, she stopped short of opining Stotts did not sign the Assignment of Deed of Trust and conceded she lacked the necessary information to render that opinion.”

COMMENTARY: In my commentary herein for *Rodriguez and Rodriguez v U.S. Bank, N.A.*, Civil Action No. SA-12-CV-345-XR (US DC W.D. TX 2013), I asked what Baggett might be teaching FDE students of Handwriting University given his inadequate affidavits that are so often rejected by the courts. Apparently there is inadequate inculcation of conscientious attention to all requirements for making the examination and writing a report or affidavit that meets the client’s needs. It is inexcusable not to have requested proper exemplars and not to refuse the assignment if the client does not supply materials essential to a relevant and reliable opinion.

A potential dimension to this case is that Stott could have been one of those rare individuals that have several “distinct signature formations.” Only a proper set of assuredly genuine signatures will reveal whether or not such is the case. There are several possible causes for a person to sign genuine signatures in distinctly different ways, but an astute observer can often determine the unique commonality of them all.

I take this case as one in which Chrisman gave testimony since it says “conceded she lacked the necessary information” to express an opinion of value to her client’s legal efforts.

684. *Maraziti, et al., v Stone*, No. D059749 (CA App. 4 Dist. 2013)

“In its statement of decision in the underlying action, the trial court noted that Maraziti presented the testimony of David Olekslow, a questioned document examiner. Olekslow testified that Stone ‘appeared to have’ manipulated some e-mails, but the trial court found ‘[t]he effect of this so-called manipulation was marginal in the scheme of things.’ With regard to ‘Sub-Rider A,’ Olekslow opined that it had never been attached to the principal agreement. The trial court concluded, however, that the significance of Sub-Rider A was ‘collateral to the dispute’ between the parties. Finally, the trial court found that the spreadsheets Stone offered to prove his expenditures and Olekslow's testimony that some of the spreadsheet entries ‘may have been duplications’ to be unimportant because Stone testified that the spreadsheets were “working documents” and that he could not attest to their correctness.”

COMMENTARY: Expert witnesses can make a good living with clients who engage them to perform ultimately useless services. The correct spelling of the examiner’s name is “Oleksow.”

685. *Martin-Bragg v Moore*, No. B238772 (CA App. 2 Dist. 2013)

The case report begins: “Moore appeals from the judgment on a number of grounds, most notably the trial court's refusal to consolidate the unlawful detainer case against him with another action then pending in the superior court, brought by Moore, seeking quiet title to the property based on allegations that Martin-Bragg's title to the property was

actually held in trust for Moore's benefit. Upon a fragmentary and disorganized record we conclude that the trial court abused its discretion in refusing Moore's request to consolidate the unlawful detainer and quiet title actions for trial, and that Moore was prejudiced by being forced to litigate the complex issue of title to the property under the summary procedures that govern actions for unlawful detainer.”

In that context the trial court heard evidence within the narrowly defined issue it considered: “On the trial's first day the court heard testimony on the plaintiffs' behalf from Martin-Bragg, from Mr. Rile, an expert document examiner, and from Moore, under Evidence Code section 776.” Rile said Moore’s signature on a lease agreement appeared to be his.

“Called as an adverse witness, Moore testified that neither the purported signature on the lease agreement (Exh. 5), nor a number of the comparison signatures used by the document examiner, were his. He believed that some of the signatures Mr. Rile had used for comparison, on checks and other documents, had been done by others—including Martin-Bragg—without and sometimes with his authorization.”

Martin-Bragg was permitted to reopen her case for Rile to identify two reports made during court recesses. Footnote 13 states: “According to the court's later statement of decision, Mr. Rile testified that the signature block of the Affidavit and Declaration, purporting to contain Martin-Bragg's and Moore's signatures, was created by photocopying and resizing the parties' signatures taken from a Notice of Appeal filed in another case.”

It was error for the trial court to separate the hearings on ownership and on unlawful detainer, so Moore won his appeal. The last words of the opinion are:

“The opinion filed in the above-entitled matter filed on August 1, 2013, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

“There is no change in the judgment.”

COMMENTARY: If the opinion by Rile given in Footnote 13 is correct, at least someone should be given merits for joining the modern movement to recycle all used but still good things. As to Moore’s claim that Rile used purported Moore signatures written by others, one recalls the Hitler Diary case where the first experts were said to have given an incorrect opinion. They were half correct and half incorrect, as Rile would be in this case. The writer of the exemplars had indeed written the purported Hitler Diaries, since the same forger wrote and supplied to Stern Magazine both the Diaries and the exemplars given to the first experts so that they could authenticate the Diaries.

686. *People v Alexander*, No. E055128 (CA App. 4 Dist. 2013)

The entire report on the expert testimony is: “A questioned document examiner testified that Dillard probably did not sign the checks and that his checks could have been written and/or endorsed by defendant.”

COMMENTARY: “Could have been” is at best a reasonable possibility that in turn supports only suspicion, while all the suspicion in the world does not amount to one bit of

hard evidence, much less proof.

People v Jimenez, No. B226623. (CA Ct. App. 2 Div. 2013)

Footnote 9 reads: “Luevano did not come forward with the invitation to establish defendant's alibi until two years after he was arrested.

“An FBI document examiner confirmed that the same ink was used on the invitation and the envelope. A forensic document examiner from the Los Angeles Police Department found indentations in the upper left hand corner of the invitation that corresponded to Luevano's address. There were indentations in the center of the invitation, but the examiner could not identify any particular words. There were no indentations on the back of the envelope, indicating that something was in the envelope when it was addressed.”

COMMENTARY: If one had no experience in performing or watching the detailed tasks involved, one would mistakenly think it would have all taken only fifteen minutes at most.

687. *People v Thomas*, No. B236133 (CA App. 2 Dist. 2013)

A woman found two threatening notes in her home's mail box with blood on them. The notes used phrases peculiar to Thomas, and the woman said she recognized his handwriting on the second note. Footnote 2 reads: “The parties stipulated at trial that the blood on both notes was Thomas's. A handwriting expert testified that there were indications to suggest that it was Thomas's handwriting on the notes, but he could not render a more conclusive opinion.”

COMMENTARY: Presumably the blood obscured details, while the likelihood is that a disguise was used.

688. *People v Westmoreland*, No. A127394 (CA App. 1 Dist. 2013)

One of the things Defendant asserted was error was admission of a confession. This was countered by:

“In a petition for rehearing, the People argued admission of the confession was harmless in light of a letter admitted into evidence at trial, People's Exhibit 54A. On its face, the letter appears to have been written by appellant and sent to Gadberry following appellant's arrest on the present charges. In the letter, appellant admits he was the person who killed Sanchez. Among other things, he states, ‘But I'm hoping for manslaughter or self defense. Either one will be good for me. You don't have to worry as much as me. Because I'm the one who did it.’ He asks Gadberry to provide her lawyer with a justification for his acts, without ever suggesting that the justification is true: ‘When you talk to your lawyer, tell him or her that the Mexican beat me up and I defended myself. Please tell them that it was self defense.’ At trial, a forensic document examiner testified appellant was the person who wrote the letter, and it was admitted into evidence over appellant's objection.”

COMMENTARY: Once more we have a case of routine admissibility and routine

self-immolation by a defendant's clever announcement of his guilt and of his not so secret plans to beat the rap. Letters to and from prison inmates are like messages on the Internet in being potentially open to the entire universe.

689. *Shanley v Shanley*, No. D062551 (Ct. App. CA 4 Dist. 2013)

A sister brought suit against her brother over their mother's estate. In what seems to be a side issue, the sister alleged error because her rebuttal handwriting expert, Sandra Homewood, was not permitted to testify. She had declared Homewood after the cutoff date, and her brother had presented no handwriting expert evidence to rebut.

COMMENTARY: If you enjoy familial melodramas, this one has enough sub-plots for a TV docudrama.

2014

690. *Bellows v Bellows*, No. A139994 (Ct. App. CA 1 Dist. 2014)

In an intra-family dispute over a will, the trial court's decision was affirmed.

"Gail also argues that the court erred in allowing defendant's expert witness to testify regarding the suggested forgery of the check used to deposit Beverly's inheritance from Bird into the POD account. Defendant's expert, David Moore, testified that he analyzed the check but could not reach a conclusion about whether the signature was genuine. He testified that his 'formal finding is that I have no conclusion as to whether that's a genuine signature or not.' He explained, 'The signature looks like a genuine signature, it appears to be her genuine signature, but, because the quality of that copy is so poor, I can't evaluate any of the subtle features in that signature.' He detailed features of the check that suggested the signature was genuine.

"In its statement of decision, the court explained that it found 'the testimony of expert David Moore more persuasive than the testimony of expert Patricia Fisher, who thought the signature was probably not genuine. In reviewing the testimony and exhibits, the court finds David Moore's opinion that he can make no conclusion but it looks like a genuine signature is correct. The chances that Fred Bellows could have crafted such an accurate replica of Beverly's signature while at the bank seems minuscule and it is an odd item to forge since a signature would not be needed for deposit anyway.'"

Moore had not, in fact, given an opinion on the authenticity of the signature.

COMMENTARY: This is one of those rare case reports where enlightening facts about technical issues are addressed, and very succinctly. The appeal gives several quotes from the trial court, of which this might give heart to many litigants: "The hostility between the attorneys during the litigation and through the trial should not be imputed to their clients."

691. *Estate of Bridges; Hansen v Brumleve*, No. A137168 (CA Ct. App. 2014)

Brumleve was estate executrix under a first will. A second will came to light which

a document examiner said had nothing to indicate it was false. Footnote 4 states: “Dissatisfied with the opinion that the second will was valid, Brumleve hired another forensic document examiner who concluded that Bridges did not sign the second will.” This second document examiner, Beth Chrisman, so testified. There is no indication the first examiner testified, though the court found the second will valid and ordered probate to proceed under it. Ten compliance hearings regarding Brumleve’s failure to obey court orders are each discussed briefly in the case report. Sanctions against Brumleve were upheld.

COMMENTARY: Beth Chrisman’s qualifications, for seeming to be the only person to agree with her client, include a 3-year apprenticeship under Bart Baggett, the son of Curtis Baggett, and membership in one of Dr. Robert O’Block’s consortium of disparate forensic groups.

692. *Crowe, et al., v Tweten*, No. E058311 (Ct. App. CA 4 Dist. 2014)

Plaintiff’s mother and father had amended a trust so that the bulk of their estate would go to the surviving spouse and a small amount immediately to their children. Upon the death of the surviving spouse, the entirety of the estate would go to their children. Plaintiffs petitioned the court to set aside the amendment on several bases, including forgery. The opinion of their handwriting expert was rejected by the court at trial:

“Following a bench trial, the court issued a detailed tentative decision, wherein it found in favor of Leonard and against plaintiffs. Specifically, the court rejected the opinion of the plaintiffs’ handwriting expert, William Leaver, finding that he had relied on incorrect information in forming his opinion about the legitimacy of Eileen’s signature on the amendment.[9]”

Footnote 9 reads: “It is clear from [William] Leaver’s testimony, that his opinion as to the signature’s validity was very greatly influenced by his belief that the decedent was ‘near death’ and was ‘two days before coma’ at the time of execution. The information, underlying Leaver’s belief, was incorrect, and was relayed to the expert by daughter’s counsel at the time the expert was retained.”

COMMENTARY: Tweten’s expert, Howard Rile, also “agreed that the questioned signature did not look like Eileen’s known contemporaneous signature.” The case report notes that the fact that Eileen was reclining and was writing on a magazine was not taken into consideration by either expert. All in all, this case is an object lesson for experts both to obtain relevant and correct information and consider circumstantial conditions for the execution of handwritings and signatures that they examine and opine about. A cross-examiner, who is sufficiently astute and to discover and challenge the opposing expert with such standard requirements, can impeach, and maybe even have disqualified, the opposing party’s expert.

The issue of sanctions for failure by Plaintiffs to agree to requested admissions on certain factual issues, including that of forgery, is discussed at length and remanded to the trial court for consideration.

693. *In re D.H., a Person Coming Under the Juvenile Court Law; People v D.H.*, No. E058077 (CA App. 4 Dist. 2014)

An officer of the law was qualified to testify as a graffiti expert, explaining purposes of graffiti and costs of cleaning it up. One claim of error by the trial court was that the officer was permitted to testify as a handwriting expert but was not qualified to do so.

“Minor contends the graffiti expert was not a handwriting expert, and because the officer did not personally observe minor's handwriting, he should not have been permitted to express a lay opinion under Evidence Code section 1416 about similarities in writing to establish it was minor's doing. We are not persuaded. The officer did not purport to testify as a handwriting expert. He attributed the graffiti to minor based on minor's presence near freshly painted graffiti, his possession of a can of black spray paint, the presence of black paint residue on minor's right index finger, and the fact that minor was the only one of the three Hispanics who had graffiti paraphernalia on his person. The officer then testified that all of the graffitied monikers of ‘INDO’ in its various spellings, and all of the graffitied numbers 26 with a T or upward pointed arrow, were painted by the same person based on the similarity of writing.

“Minor interposed no objection to the testimony about similarities in the graffiti on any ground, let alone on the ground of improper expert or lay handwriting opinion testimony, so he has forfeited his challenge on appeal. (Evid. Code, § 353, subd. (a); *People v. Dowl* (2013) 57 Cal.4th 1079, 1087-1088.) In any event, minor cites no authority for the proposition that an otherwise qualified graffiti expert may not testify about similarity in style and painting without also qualifying as a handwriting expert or satisfying Evidence Code section 1416. In the absence of such authority, we decline to so hold. (But see *In re Trinidad V.* (1989) 212 Cal.App.3d 1077, 1080 [court held police officer did not need to be a handwriting expert to describe similarities in writing of graffiti for purposes of establishing probable cause for an arrest, but in dicta implied such expert testimony might be needed to prove ‘two writings were in fact made by the same person’.”

COMMENTARY: I quote the two paragraphs regarding the issue of handwriting expertise since the Court of Appeals roundly contradicts itself and provides clear proof its ruling was in error. The first paragraph quoted begins with assertion the officer was not testifying as a handwriting expert, but it ends describing testimony that can legitimately only be received from a duly qualified handwriting expert, namely identifying various writings as by a single writer based solely on observations of the writing traits. The claim at the end of the second paragraph is quite the illogical stretch about *In re Trinidad V.*, implying evidence sufficient for establishing cause for arrest is sufficient for evidence at trial. In *Trinidad* the arresting officer did not make any kind of handwriting comparison but acted in part on the minor's admission his gang moniker was “Art” which was the graffiti tag on the store wall that was vandalized. In *D.H.* that was transformed into a handwriting identification. Further, unlike *D.H.* the *Trinidad* decision involved no court testimony. But why should major differences be permitted to be minor obstacles to a cherished outcome?

There is another touch of fanciful legality that I have mentioned in other cases

discussed herein. “Minor interposed no objection to the testimony about similarities in the graffiti on any ground....” Well, suppose the minor, in exasperation over ineptitude of his trial counsel and assuming he were keen enough to realize he was being had by illegitimate testimony, had personally voiced an objection. After a stern rebuke from the judge and assurances from his attorney he would henceforth be as meek and quiet as the proverbial church mouse, the error would not only be ruled not preserved but that his outburst was clear evidence he deserved all the ill that administration of juvenile justice could bring down upon his head.

As a final irony in the appeal decision, an irony certainly not intended since legal minds are seeking legal excuses, the minor is said not to have cited relevant case law in support of his appeal. Thus the ineptitude of both his trial and appeal counsels are credited only to him. If further appeal should revisit these inept performances, the excuse would be the attorneys, failing to do what the minor is credited with failing to do, actually made astute tactical decisions.

694. *De La Torre, et al., v Century Surety Company, et al.*, No. D061028 (CA Ct. App. 4 Dist. 2014)

“[3] In 2007, Jalisco's agent, Motz, photocopied the 2006 questionnaire, whited out certain portions and filled them out himself. Garcia denied signing the questionnaire in 2007. After first testifying that Garcia signed the 2007 questionnaire in Motz's office, Motz admitted during trial that Garcia did not sign this document. A document examiner concluded that the 2007 questionnaire was an altered copy of the 2006 questionnaire. On the second page, the only difference is the date.”

COMMENTARY: The entire discussion of the document examiner's opinion is the incidental remark tucked into the above footnote. Even then, one wonders what five figure price tag there was for the discovery of what any literate person could discern. It reminds me of a case where a document examiner conducted many extensive tests to achieve a single firm conclusion, namely that the writing in black ink was indeed in black ink. It is such esoteric discoveries that require two years of training, two years of apprenticeship, memberships in and certifications from the most self-esteeming professional organizations, with years in government service and after retirement many more years in private practice.

Dear reader, please excuse a private note. I am named after my maternal uncle, Marcel Renaud. Uncle Marcel's affectionate nickname was Motz. I so esteemed him that I would not accept being called Motz. It is disheartening to discover a scoundrel bearing that honorable name.

695. *Estate of Isenberg; Kitchen v Foxford, et al.*, No. E052086 (CA Ct. App. 4 Dist. 2014)

In a slightly complex bit of events, a mother dies in the hospital after allegedly signing a will disinheriting all but one of her six adult children. The opinion of Kitchen's handwriting expert is mentioned and discredited thus: “The court credited the testimony of

Carlson, the other witness to the will, and the notary public, and discredited the testimony of Kitchen's handwriting expert who testified Isenberg's signature appeared to be forged. The court found Isenberg's signature on the will was genuine.” Carlson was decedent’s personal injury attorney who did not prepare wills but wrote the death bed will for Isenberg.

COMMENTARY: My skeptical antennae went up on reading this case report. Would any competent handwriting expert do no better than to say “appeared to be forged”? Or even an incompetent one? Or would an attorney expect such inexpertise to sway a fact finder? Hopefully not.

What further makes one wonder is the amount of money involved and how it was divvied up: “In June 2004, the personal injury judgment was affirmed on appeal. Debbie died in September 2004.... In her petition, Kitchen alleges Anheuser-Busch, Inc., paid the judgment to Isenberg's personal injury attorneys, Carlson and Johnson. The attorneys, in turn, bypassed opening a probate or intestate estate for Isenberg, bypassed paying any creditors, and distributed \$2,366,788.30 to themselves for their attorney fees; \$998,121.71 to Foxford, and \$973,766.71 to Debbie's estate.” Foxford was Decedent’s brother, and Carlson the writer of, and principal witness to, the will. The estate went to the eldest daughter.

696. *People v Chavez*, 2d Crim. No. B252941 (Ct. App. CA 2 Dist. 2014)

First factual position: Defendant was asked by trial court did he initial box by the warning that conviction could result in deportation and other boxes on plea agreement. He said yes and admitted to his signature.

Second factual position: In motion to vacate judgment, his declaration said he initialed all pages except page 4 regarding immigration consequences.

Third factual position: In motion for reconsideration, his handwriting expert submitted a declaration saying he had initialed page 3 but none of the other pages. In his own declaration he agreed with his expert.

Apparently there being no occasion for a fourth factual position, “The trial court found that appellant's declaration was not credible and that the expert's opinion was therefore irrelevant.”

COMMENTARY: This meets no criterion for inclusion though it brings up an essential point for the particular kind of non-legal, non-scientific reliability involved. The client and the expert must have agreement on what factual position is to be taken, no matter how unfactual it is. I am not saying this expert provided retainer-check reliability, only that they cannot be on opposite sides of the same fact at issue, otherwise it tends to cast doubt on their impeccable integrity.

697. *People v Harper*, No. F064498 (CA App. 5 Dist. 2014)

Defendant was convicted of several felonies involving a drive-by-shooting, which were all affirmed. Marcel Matley appeared as handwriting expert for the defense.

COMMENTARY: I will begin this commentary with what the defense attorney told me when she talked to the jurors after their verdict. They told her that the prosecutor had holes all through her case. Defense attorney could not develop the reason for convicting on a case full of holes.

The issue I addressed was whether Defendant had written several kites that were cumulatively tantamount to a confession. Kites are secret messages prisoners write and send to each other, usually by way of a trustee, i.e., a prisoner trusted to perform services for the administration but not violate the rules, such as deliver kites between prisoners. I could demonstrate my opinion that Defendant definitely did not write the kites in question. There was a key exemplar by Defendant that the prosecutor introduced into evidence that was the principal exemplar making the opinion definite.

On Friday I testified in an *in limine* hearing on a motion by Defense to exclude the kites in question. I was sent home to prepare more evidence and return Monday for the conclusion of the *in limine* hearing, after which the judge would render her decision whether to exclude the kites. Monday I arrived to be told the prosecutor, with the approval of the judge, had already had the chief accuser testify before the jury to his story that Defendant had written the kites, and the kites had already been admitted into evidence. Since I was there, I was called to give my testimony in chief. While the trial proceeded, this highly irregular procedure was appealed, and the Court of Appeals found nothing wrong with any of it.

Before I testified, the prosecutor brought two motions. One was to exclude the principal exemplar because she was withdrawing it from evidence. Over objection, the judge permitted the prosecutor to prevent defense counsel's using exculpatory evidence originally introduced by the prosecutor. But that was not enough to prevent my raising a reasonable doubt in the minds of the jurors, which may account for the second motion. The prosecutor said she could not see what was left of my enlarged display after she severely redacted it, so the judge approved moving it to the far side of the room from the witness stand, which was even farther from the jury by several feet. I was restricted to the witness stand. Who could make out even enlarged details of the writing when placed at least 20 feet from me, equally from the prosecutor, and more than that from the jury? The prosecutor could have done what all attorneys had done in such situations when I testified, namely stand up and walk around to the jury's side of an enlarged exhibit placed so they all could see it easily. Defense attorney would then stand in a similar position to ask questions.

The appeal decision contains nothing related to the irregularities and outright unfairness of the rulings on presentation of the handwriting evidence for the Defendant. One might wonder, if one be a skeptic, whether rulings at trial were affected (infected?) by the fact that the judge had been in the D.A.'s office as a colleague of the prosecutor at the trial and had actually appeared for the D.A.'s office in a pre-trial hearing against the same Defendant in the same case.

698. *People v Lopez*, No. E058786 (CA 4 App. Dist. 2009)

“Ruth Creed was a document examiner employed by the Riverside County Sheriff's Department. She had extensive experience in handwriting analysis. She compared handwriting for defendant, Ochoa, Castro and Contreras. NAPA invoices that she was shown (61 in total) that were purportedly signed by Castro and Contreras were in fact not their signatures.”

COMMENTARY: Usually I do not include a case where it is not specifically stated that the handwriting expert testified. I believe it to be a safe inference Ms. Creed did testify, but there is the added incentive to include the case because of the long term and wide ranging methods of embezzlement of Coachella School District funds by Defendant. One wonders how he got away with it for so long given the trail of suspicious clues he left along the way. One suspects that with a bit less brazenness many embezzlers are getting away with quite a lot.

699. *People v Miller, et al.*, No. B232167 (CA Ct. App. 2 Dist. 2014)

In an appeal of two murder convictions, Miller claimed he was at a medical facility in another city at the time of the murders. A hospital form was offered as evidence of this:

“Kurt Kuhn and Barbara Torres were handwriting experts. Kuhn was privately employed and Torres worked for the Sheriff's Department. They both examined the November 9, 2005, LCH emergency room forms. Kuhn opined it was highly probable, although not conclusive, that Miller had filled out one portion of the LCH registration form. Torres opined there was a strong likelihood Miller had filled out a hand-printed portion of the LCH registration form. However, neither Kuhn nor Torres could say when these forms had been filled out.”

Later in the case report: “During the cross-examination, the prosecutor showed Miller's handwriting expert, Kurt Kuhn, three documents containing Miller's signature and asked if he had ever seen them before. Miller's attorney complained the documents were irrelevant and that no foundation had been laid. McLeod's attorney said he hadn't seen the documents before. The trial court allowed the prosecutor to show Kuhn the documents. Showing Kuhn examples of Miller's signature he had never seen before was relevant to an evaluation of Kuhn's expert opinion.”

COMMENTARY: The second quotation is an important ruling for cross-examining an expert witness. There is no indication how the additional signatures impacted the expert's opinion.

700. *People v Mulvany*, No. D063443 (CA Ct. App. 4 Dist. 2014)

Defendant was convicted of theft of an automobile from a dealer and selling it to an unaware buyer, who had paid \$10,000 cash. DMV papers for the vehicle were forged. “In his defense, defendant presented the testimony of forensic document examiner David Oleksow, who obtained samples of defendant's handwriting (signing the name Jack Dempsey) and compared them with the Jack Dempsey signature on the DMV documents.

Oleksow testified he was unable to ‘identify or eliminate’ defendant as the person who signed the DMV documents.”

The case report also addresses two issues often the subject of challenges to evidence in criminal cases. The reactions of the victim to the photo lineups she was shown showed her to be less than certain in identifying Defendant. However, Defendant had altered his appearance from the time of the event, after the preliminary hearing, and then again for trial. The second issue is that, although several circumstances could not individually prove guilt, it was proper for the jury to weigh them in light of all the evidence.

COMMENTARY: Oleksow took his exemplars from Defendant who was his client and who had interest to obtain a favorable opinion from Oleksow. Thus Oleksow, apparently with the agreement of defense counsel, violated California’s long established *post litem motam* rule whereby one may not voluntarily create exemplars to prove one’s own testimony or an element of one’s own case.

A second quizzical thing about the expert handwriting testimony is that it was useless to anyone needing help to determine whether Defendant wrote the false DMV documents. Presuming the witness did not change his opinion on the witness stand, defense counsel might have considered it enough to cast a reasonable doubt in the jury’s mind. Contrariwise, I think such an opinion psychologically is taken to be positive evidence of the opposing position. A juror might think that, if the defense could prove Defendant did not write the documents, it would do so, whereas the hedging is taken as a sign of avoiding perjury in saying he did not but avoiding saying he did in order to be hired to testify with as much favor to the Defendant as one could. However unjustified, the mind might well work that way.

701. *People v Paigly*, No. H035692 (Ct. App. CA 6 Dist. 2014)

Among several experts for the prosecution at trial, Criminologist John Bourke testified as an expert in handwriting analysis, determining Paigly had written some of the kites recovered from inmates.

COMMENTARY: This case report gives the best and most extensive description that I have come across of kites (messages on strips of paper with micrographic writing used by prison inmates), both as to their usage and physical nature. One way of concealing them is to wrap them in plastic film and hide them in the rectum.. If you handle originals, you would definitely want to wear gloves. This is probably a good idea generally with materials of unknown origin and previously questionable handling, both to avoid transferring foreign evidence to the material being analyzed and to protect yourself from any potential health risk.

702. *People v Rodriguez*, 58 Cal.4th 587, 168 Cal. Rptr. 3d 380, 319 P.3d 151 (CA 2014)

Defendant’s conviction and death penalty for murdering her husband for insurance money were confirmed. During the investigation a sheriff’s deputy received an anonymous fax, the original of which was later found in Defendant’s purse pursuant to a search

warrant. A document examiner testified that the purported signature was in original red ink. The fax was a false lead as to who was the murderer.

COMMENTARY: Though this case is outside the originally defined limits of this study, the lady's angelic qualities inspired inclusion. Her first name, Angelina, means "a feminine angel." She persuaded her husband to buy life insurance, then bungled her first attempt at murder and had to change the means she took to kill him. While in prison, she tried to dissuade a witness from testifying against her. When that failed, she attempted to solicit the murder of the witness. Other enticing qualities of the femme fatale are given in the case report.

In a different vein is the waste of public funds on death penalties. California, and maybe other states, house death row inmates in the hundreds. Attorneys, experts and others are paid for by the state, one group to try to kill the prisoner and the other group to try to delay death as long as possible, while in between a third group serving the court system at further cost to taxpayers sorts out the two efforts and helps prolong the drama. So many death penalties never having any outcome other than a mass of court hearings, first in state courts then in federal courts, are hardly a deterrent to crime. If a death penalty were a deterrent to irrational behavior of any kind, no one would smoke tobacco, drink heavily, nor use ultimately lethal drugs, all of which are more likely to kill participants than a death penalty would. Criminal gang members have a far better chance of being killed by rivals than members of the death row population have of being executed, yet both populations seem to increase steadily. Then, while the state tries to kill off the latter, the state also provides them with the medical care needed to keep them from dying. It all seems a bit irrational.

703. *People v Rosell*, No. B242761 (CA App. 2 Dist. 2014)

One charge for which Defendant was convicted was intimidating a witness. The note, that was said to identify whom an associate was to scare since she could hold him to the charge, was submitted to a document examiner:

"A forensic document examiner compared four documents taken from Rosell's cell to the note recovered from Amon. The examiner concluded that the handwriting came from the same author."

COMMENTARY: With convictions and enhancements, cumulatively Defendant was sentenced "for 210 years to life with 870 days of credit." Apparently that came without any guaranty that he would live another 208 years and 225 days so that he could enter into the "to life" part of the sentence.

704. *People v Smith*, No. E055780 (CA Ct. App. 4 Dist. 2014)

In a 24-page case report, this is the entirety of all mention of testimony by the document examiner:

"James Blanco, a forensic document examiner testified he had examined various writings by Does 1 and 2 and, in his opinion, Doe 1 wrote the notes that Doe 2 claimed to

have written.”

COMMENTARY: The two Does were sisters whom Defendant was convicted of molesting sexually. The two girls disagreed with the expert’s opinion, but the decision does not sort out which opinion is correct, indicating once more how inconsequential our expert evidence can be in the eyes of the court. Presumably Blanco was called by the defense to cast doubt on the veracity of the prosecution’s two key witnesses.

705. *Estate of Yen Wang; Liu v Wang*, No. E055476 (Ct. App. CA 4 Dist. 2014)

Wang’s widow, Liu, denied having signed a Chinese prenuptial agreement voluntarily, but she did not meet her burden of proof. A document examiner said the signature on the agreement was hers.

COMMENTARY: It is not said whether the document examiner was Chinese or had special qualifications in Chinese. For basic competence it makes no difference whether or not the expert can read or write a foreign script so long as one knows the direction of the writing and understands the physiology of handwriting and its rhythmical progression. However, for more assured results a more intimate knowledge of the nature of the script in question and the assistance of an expert in the language are recommended.

706. *You Never Know, LLC, v U.S. Bank National Association, as Trustee, etc., et al.*, No. C065097 (Cat. App. CA 3 Dist. 2014)

Amid a complex description of doings in the case, the key sentence for our interest is: “On July 12, 2005, a forged ‘SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE’ of the Fazil deed of trust was recorded, without Fazil’s knowledge or consent.[2] The document purported to substitute Fazil as trustee in place of Financial Title Company, and to reconvey to Hollis the interest in the property represented by the Fazil deed of trust. At trial, a handwriting expert opined the documents were forged.”

Footnote 2 reads: “The trial court found the documents were forged and recorded by ‘an unknown individual,’ but the statement of decision noted in a footnote: ‘There was evidence that the person with whom Mr. Fazil dealt, Ms. Hollis’[s] son, had committed suicide, and that the notary who notarized the documents had been incarcerated in connection with similar activities.’ The trial court found ‘there was no evidence of any inequitable conduct on the part of Mr. Fazil.’”

COMMENTARY: The case report is a complex of various legal issues well seasoned with forgery, manipulations, conniving against others, an undisclosed mother/son relationship whereby the son induces Fazil into a deal benefitting the mother, and the suicide of the son, with other carryings-on. The only aspect that seems routine about the case is the admissibility of the handwriting expert. Well, some might say real estate transfers these days are routinely facilitated by forgeries.

2015

707. *Estate of Donald M. Beach; Elizabeth Beach Humiston, et al., v Bruce Beach*, No. B260366 (Ct. App. CA 2 Dist. 2015)

“8. Frank Hicks' testimony

“Mr. Hicks is a forensic document examiner. Mr. Hicks testified on behalf of Ms. Humiston. Mr. Hicks testified there was a ‘strong probability’ that Donald signed the November 15, 2010 will and the holographic will. According to Mr. Hicks, ‘strong probability’ is defined as one step below identification, the highest level of handwriting certainty. Mr. Hicks testified the body of the holographic will was probably prepared by Donald. This is one step below the ‘strong probability’ standard.”

COMMENTARY: Bruce prevailed and could recover his costs on appeal.

708. *In Re a Person Coming Under the Juvenile Court Law. People v Brandon W.*, No. D067375 (CA Ct. App. 4 Dist. 2015)

The juvenile’s conviction was affirmed for misdemeanor vandalism for graffiti at a San Diego high school.

“David Oleksow testified as an expert in forensic document examination on behalf of Appellant. After examining a photo of the graffiti in question and the papers found in Appellant's backpack, Oleksow stated the results were ‘inconclusive’ as to whether or not the same person was responsible for both writings. Oleksow opined the writings on the papers could have been written by two or three different people and therefore, he could not eliminate Appellant as a possible writer of the graffiti in question.”

COMMENTARY: The scant information given regarding document examination hints at a rather inadequate performance by both the prosecution and defense. The value for forensics is that yet another case can be cited as permitting expert testimony regarding graffiti, however inexperienced it was.

709. *Harrison, et al., v Dourec, et al.*, Nos. B255832, B257352 (Ct. App. CA 2 Dist. 2015)

The issue was whether a deceased man had signed certain documents. The trial judge found he had, and that was affirmed. Each side presented testimony by a document examiner. The report gives this summary of testimony by Howard C. Rile:

“Howard Rile, the appellants' handwriting expert, testified that he was ‘virtually certain’ that the signatures on the documents at issue — the 2011 Trust, the will amendment and the durable power of attorney — were not Zeltonoga's.[13] The first portion — the ‘Zelt’ — differed significantly from Zeltonoga's known signature on other documents, including a check he had signed November 20, 2011. In addition, the signatures were written slowly, which is an indication of forgery. Rile knew generally that Zeltonoga was hospitalized on November 20 and in very poor health, but did not know the exact nature of his illness, that he had lost a significant portion of his body weight, or that his morphine drip had been stopped prior to his signing the documents. Nor did Rile know how

Zeltonoga was positioned in relation to the documents when he signed. Rile acknowledged that these factors could cause an authentic signature to look different. On cross-examination, Rile conceded that given his degree of certainty, which he described as an eight on a scale of nine, his opinion had ‘an element of doubt’ and there was a ‘slight chance’ the signatures could have been Zeltonoga’s.”

The summary for the testimony of Wesley Grose was this:

“Wesley Grose, respondents’ forensic document examiner, had studied many more exemplars of Zeltonoga’s confirmed signature than Rile — approximately 70. He observed similarities between the suspect signatures and some of the confirmed signatures. In particular, he found some exemplars with a similar ‘Zelt’ combination. On the whole, he believed there was ‘more weight on the side’ that the suspect signatures were Zeltonoga’s due to the similarities he found and the other factors he considered, such as Zeltonoga’s health and the position in which he was writing. Grose could not say, however, that there were ‘more similarities than variations’ based solely on the writing styles. Grose agreed with Rile that the signatures had been written slowly, but explained that this could have been due to factors other than forgery, such as physical demands or disability. Grose concluded it was impossible to reach ‘a conclusion of authorship or non[-]authorship’ based on the signatures. In Grose’s view, the evidence simply did ‘not allow [one] to say whether or not it was written by a particular writer.’ Using the same nine-point scale as Rile, Grose placed the degree of certitude at five, meaning that the determination as to authenticity was necessarily inconclusive.”

The trial judge went with Grose’s opinion which, combined with other evidence and with Rile’s allowance for a doubt in favor of genuineness, had the preponderance of evidence favor genuineness which held up on appeal.

COMMENTARY: Both experts showed a questionable grasp of some principles in handwriting identification. Not all slowly written writing is a sign of forgery. The court properly listed others, and each of these has qualitative traits that should give one at least a reasonable suspicion of which cause to favor as the explanation. Many authoritative publications urge proper consideration of health, including making as certain as one can what precise illnesses, injuries or medications are in the writer’s medical history for the time of the questioned writing. I would not have imagined that Rile would have fallen down so on routine procedures, the equivalent of the attorney’s hornbook law.

The flaw in Grose’s testimony is the phrase, “more similarities than variations.” It is not a numbers game. A single significant difference prevents a finding of genuineness until there is a reasonable explanation for it. In this case, the physical illnesses of the writer combine for an unimpeachable reasonable explanation. Some research in such texts as *The Merck Manual* and *Drugs and Handwriting* by Patricia Wellingham-Jones will provide data on how drugs or illnesses might affect handwriting. Searching *PubMed* on the Internet, <http://www.ncbi.nlm.nih.gov/sites/gquery>, allows extensive research into medical journals where at rare times one finds the effects on handwriting of the specific illness or drug one is interested in.

Both Riles and Grose are with ABFDE besides other affiliations one or the other might have.

710. *Marks v LaSalle, et al.*, No. G050004 (CA Ct. App. 4 Dist. 2015)

The handwriting issue was simply whether defendant LaSalle had signed a document obligating her to pay on a loan for which a 2006 silver Bentley was surety. The loan was to enable LaSalle and her boyfriend to enter a gambling contest where they lost all the money. A handwriting expert said she had signed the document, and the court agreed.

COMMENTARY: Beyond the above bare facts is a factual story that rivals any fiction in a soapbox opera tale. I believe if a screen writer had come up with all the characters involved, the script would have been rejected as outlandishly cluttered and unplausibly too far from reality. If you enjoy melodramas, I recommend it.

711. *People v Craig*, No. B256794 (Ct. App. CA 2015)

“William Leaver, a Los Angeles Police Department forensic document examiner, testified he examined exemplars and the will to determine if appellant, Lundquist, or Norman signed Behrle's purported signature, and the results were inconclusive. Leaver also testified Behrle might not have signed the will.” Behrle was decedent whose will Craig was convicted of forging.

“Kurt Kuhn, a forensic science consultant, examined the will and opined it suggested appellant did not sign Behrle's purported signature.”

COMMENTARY: I suspect there is a lesson for us somewhere in there, but I cannot figure what it might be.

712. *People v Fryson*, No. C067008 (Ct. App. CA 3 Dist. 2015)

Edwards was a bank employee who had served Fryson during the activity leading to his trial: “When Edwards testified, she recalled only one letter she had written for defendant. There were, however, three letters bearing what appeared to be Edwards's signature. One was dated April 29, 2008, and explained that three checks (check nos. 1148, 1149, & 1150) had been returned in error. When Edwards testified for the prosecution's case-in-chief in 2010, she believed this had been the letter she prepared for defendant. She testified that when she drafted the letter she had not known whether the checks had in fact been returned in error, and had assumed the customer service department had made that determination.

“By the time Edwards testified in the prosecution's rebuttal case, she realized that she had not written the April 29, 2008 letter, even though it appeared to contain her signature. The April 29 letter described three checks (check nos. 1148, 1149, & 1150) that had been returned in error. The letter Edwards actually wrote was dated February 25, 2008, and described only one check that had been returned in error—a check that had nothing to do with this case. Only this letter was entered into evidence as an original. The other two letters admitted into evidence were copies. Defendant's own handwriting expert testified

that the signature on the April 29, 2008 letter was an exact copy of the February 25, 2008 letter, meaning one of them was not genuine. The April 29, 2008 letter purportedly written by Edwards was the basis of count 9, preparing false documentary evidence.”

COMMENTARY: The extended quote is the only way I could figure to give proper credit to Defendant’s noble efforts to improve his financial condition.

713. *People v Rios*, No. C070777 affirming conviction (CA Ct. App. 3 Dist. 2013); *habeas corpus* denied, *Rios v Beard* (U.S. DC E.D. CA 2015)

At trial Defense attorney informed the court that Larry Stewart, a handwriting expert, had concluded Rios had not written the note used by the culprit in a bank robbery. However, Stewart was in Southern California and the trial was in Sacramento, and Stewart wanted pay for all the time he was out of his office. Available funds for the indigent defendant would only cover actual work and time testifying, so defense attorney was denied the handwriting evidence. The court said Rios himself could testify that he had not written the holdup note.

The bottom line of the decision by the trial court and its being affirmed by the Court of Appeals involved at least one argument I have never read explicitly in a case report, though I often thought it simmered in the background though never expressed explicitly. I offer the extended quote believing no commentary is required of it for perceptive handwriting examiners and trial attorneys. I do pray they all give serious consideration to what might well surface again at court.

“Defendant bears the burden of showing the handwriting expert's testimony was necessary to his defense; however, defense counsel failed to make such a showing, either to the trial court or on appeal. Instead, defense counsel merely stated a handwriting expert had formed an opinion that the handwriting on the note was not that of defendant. Defense counsel provided no details about either the expert or the basis of the expert's proposed testimony. In an aside, defense counsel asked if he could ‘slip the expense in the bill’; defense counsel did not refer to Evidence Code section 730 or any other authority for his request.

“While the testimony of a handwriting expert might have been helpful, defense counsel failed to explain how such testimony was necessary to the defense and instead stressed defendant's desire for the testimony. The trial court pointed out that defendant could testify and deny that the handwriting on the note was his. Handwriting expert testimony differs markedly from ancillary services found necessary in *Ake*, supra, 470 U.S. at p. 77. In *Ake*, the defendant's mental condition was relevant to his criminal culpability and the punishment he faced. In addition, jurors, who have no training in psychiatric matters, are not in a position to make a determination of a defendant's mental condition at the time of the crime.

“Therefore, the defendant had a constitutional entitlement to a psychiatric expert. (Id. at pp. 80-83.) Handwriting requires no such specialized expertise. Under Evidence Code section 1417, the genuineness of handwriting may be proved by a comparison made

by the trier of fact. In other words, a jury is fully capable of comparing handwriting samples and assessing their authorship. And they were directed to the issue by defendant's own testimony.

“In the absence of a showing that the handwriting expert's testimony was necessary, we cannot find the trial court abused its discretion in denying defendant's request to pay expert witness fees.”

COMMENTARY: The report is worth the reading both for the discussion between the judge and defense counsel and for the reasoning why defense counsel failed to do his job of satisfying the applicable legal criteria for his request. An argument the trial court and Court of Appeals could have made to bolster the decision was that the Sacramento area and the extended area around it have no dearth of handwriting experts who are likely all as competent, if not more competent, than Stewart. Stewart is an ink expert who on at least two occasions testified under oath to his belief he had done work he had not done.

This Juan Acarlos Rios seems not to be the one convicted of murder in the case *People v Juan Carlos Rios, et al.*, No. B218445 (Ct. App. CA 2 Dist. 2011). This is a cautionary tale for researchers to be circumspect in making conclusions on single bits of evidence, such as similar names, without careful verification.

714. *People v Savary*, No. B247512 (Ct. App. CA 2 Dist. 2015)

“In 2008, defendant Keffier Savary killed Harrison Smith, who was having an affair with defendant's estranged wife. Defendant fled the state, but was apprehended on a murder warrant in Texas in 2011. While he was in custody for the 2008 murder, defendant attempted to dissuade his wife from testifying, and conspired with his girlfriend to have his wife and another witness killed. On August 9, 2011, the District Attorney filed two informations. The first charged defendant with the 2008 murder, and the second charged defendant with the 2011 crimes. Defendant never sought to consolidate the cases; rather, he agreed the two cases should be tried to separate juries, with the murder case to be tried first. Defendant was convicted of all charged crimes and enhancements in back-to-back trials before two separate juries.”

From jail, Defendant wrote a long letter to a man explaining how he wanted his ex-wife and another witness, upon whose separate demises there would be no case against him. Document examiner Iris Cruz testified in both trials that Savary wrote the letter, and both witnesses Savary objected to testified.

COMMENTARY: Having agreed to the way the trials were conducted, Defendant did not prevail on a claim of error for having them so conducted.

715. *People v Schreiber*, No. H039565 (Ct. App. CA 6 Dist. 2015)

COMMENTARY: John Bourke, a criminalist, testified as an expert witness in handwriting analysis.

716. *People v Stolp*, No. C069983 (Ct. App. CA 3 Dist. 2015)

“A defense handwriting expert opined the handwritten notes had more than one author and perhaps as many as four and were inconsistent with defendant's handwriting. The expert acknowledged some ‘6's’ were consistent with defendant's handwriting, but said everyone's 6's have some similarity.”

COMMENTARY: I have concluded that, whenever a cross-examiner asks a handwriting expert whether some isolated individual letter or feature is “consistent” with the defendant’s same isolated letter or feature, it is because the cross-examiner knows the expert’s opinion is unimpeachable on any technical or scientific grounds. So let us resort to vagueness and later illogical assertion that the expert really agreed to the opposite of what was said. So if that big, nasty C word is used against your expert of any stripe, revisit it on redirect and immediately erase all false inferences that can be fabricated about it. In this case the witness, apparently after having used the incorrect term “inconsistent,” did a neat job of countering it by saying all 6's by all of us have some similarity and so, by inference, have some consistency of some kind.

717. *SML Consultants, Inc., v Southern California Edison Company*, No. D068688 (Ct. App. CA 4 Dist. 2015)

COMMENTARY: SML sued for payments from Edison on an assignment that involved another company, Empire, that was in bankruptcy. The president of SML forged the signature of an official of Empire on the assignment. Edison prevailed at trial and on SML’s appeal. A document examiner said the forgery was probable, and that carried the day on that issue.

2016

718. *Guardianship of Brooke M., a Minor. Stacie M. v Shannon P.*, No. D066547 (Ct. App. CA 4 Dist. 2016)

Brooke, daughter of Shannon and her first husband, was born in 2008; divorce proceedings seemed complete by 2011. The father died in 2013, and his mother, Stacie, sought custody of Brooke. Her strategy seemed to be to rummage through all the family trash cans for whatever issue to be found which came down to three: Shannon’s new husband had two arrest records, she herself had committed forgery, and she had an intravenous drug addiction. Negative blood tests cleared the third accusation, and the court declined to consider the arrest records or hear Kim Stone, handwriting expert, as a rebuttal witness, who should have been called in Stacie’s case in chief. The judge found it to be gamesmanship to spring critical evidence on Shannon at the last moment.

COMMENTARY: I include this case as example of another way to keep an opposing handwriting expert out. Here Stone belonged properly in Stacie’s case in chief since the issue was supportive of one of her contentions in support of her case. My paper, “The expert ambush: How to hold off your opponent until the cavalry arrives,” 25 *San*

Francisco Attorney's Magazine, (20-2) Feb.-March, 1999, was inspired by just such gamesmanship that worked well in a child custody case.

719. *Gorlick v Arouty*, No. B266867 (Ct. App. CA 2 Dist. 2016)

COMMENTARY: Andrea McNichol, handwriting analyst, testified for plaintiff.

720. *People v Goodwin*, No. D067547 (Ct. App. CA 4 Dist. 2016)

COMMENTARY: The testimony of People's handwriting expert was received in murder conviction with life sentence without possibility of parole. The body was never found.

721. *People v Martinez, In re Martin Martinez*, on Habeas Corpus, Nos. A145497, A147453 (Ct. App. CA 1 Dist. 2016)

COMMENTARY: This is not a case of handwriting expertise, indeed there is no document examiner at all. However, it involved a document examination issue and expresses a common though evidentially destructive idea. To quote: "While incarcerated, defendant wrote letters to Oliver Barcenas, a member of the Norteño street gang with the moniker 'Vicious.' [3] The letters, which defendant admits writing, were seized from Barcenas's residence during a search. The letters have handwriting on one side and 'ghost writing' on the back — indented writing made by a pen without ink that scores the paper and appears invisible to the naked eye until shaded with a pencil."

It appears nicely legible when shaded with pencil if one is lucky. It is a highly spoliating procedure that vitiates efforts at applying the correct procedure. The correct procedure uses an EDD, electrostatic detective device, to develop the indented images onto a film of Mylar which can at times reveal a lot more evidence than just the indented writing. On the contrary, shading the area with pencil will prevent the superior development with the EDD since the paper will afterwards reject the electrostatic charge essential to the enhanced imaging. Other latent evidence on the paper can be spoliated, even almost to complete destruction of the document's evidential value.

A gentleman came to me one day with a paper he had shaded with pencil. The indented writing had not been made the least decipherable, but the EDD was rendered useless, whereas if he had brought the document clean of any interfering substance, he would have had the full indented writing made readable.

Please, do not attempt any non-professional treatment of an evidential document. Particularly, do not consider the entertaining TV stories on forensics as reliable instruction on how to do the work properly or even consider it as correct scientific information, since the TV writers TV actors have a different perspective and objective than the mostly uncelebrated workers in our public and private forensic laboratories.

722. *People v Washington*, No. B257234 (CA Ct. App. 2 Dist. 2016)

The trial court agreed to consider appointment of a handwriting expert to assist

Washington, but the judge eventually excluded the expert's testimony. Footnote 5 states: "Washington also contends that the trial court precluded his attorney from developing support for the testimony of a handwriting expert, James Black. The trial court, however, ruled that Black's proffered testimony was inadmissible, and Washington does not appeal this ruling."

COMMENTARY: No inference can be drawn from this ruling since the reason is not stated. It is not said why the testimony was ruled inadmissible. Well, I take that back. Some people do not let the lack of essential information deter their staunch opinions about things.

723. *Salmanyany v Ovsepiyan*, No. B266719 (CA Ct. App. 2 Dist. 2016)

COMMENTARY: Plaintiff/Appellant presented testimony of a handwriting expert, but it provided no benefit.

724. *Shwarz v Bridgelock Capital, et al.*, No. B262386 (Ct. App. CA 2 Dist. 2016)

"In support of her opposition, plaintiff presented a declaration averring that 'I didn't believe I ever signed, nor was I ever asked to sign, nor was I ever shown the Settlement Agreement, prior to my deposition being taken in the Second Lawsuit.' Plaintiff also included declarations by forensic document examiners. Victoria Petersen concluded it was 'highly probable' that plaintiff's signature on the settlement agreement was not genuine. Certified document examiner Jess E. Dines also concluded that it is 'highly probable' that the signature appearing on the settlement agreement was not genuine."

COMMENTARY: Though court testimony is not indicated, the case gives occasion for some sage advice for trial attorneys.

Defendants prevailed under the law of privileged communications during litigation. The document examiners did not say who made the alleged forgery of Plaintiff's signature, which seemed to have been a key factor in denying the claim that Defendants should bear the onus of it. I could not find a web site for Ms. Petersen, while Mr. Dines's does not say who certified him. It is essential to make opposing experts reveal such data since, at least in document examination, there are certifications to be had that seem to rely on such essential and objective evidence of expertise as a solvent checking account to pay the fee. The cross-examiner must investigate all such claimed qualifications and expose the questionable ones during voir dire, even more so the out-and-out false ones.

725. *In re T.J., a Person Coming Under the Juvenile Court Law. People v T.J.*, No. D068208 (Ct. App. CA 4 Dist. 2016)

COMMENTARY: Testimony was received from defense handwriting expert.

726. *Weidner v Eads*, No. H040950 (Ct. App. CA 6 Dist 2016)

COMMENTARY: Forensic document examiner testified that notations made on a trust instrument were by decedent.

3. California Supreme Court.

1993

727. *People v Neely*, 6 Cal. 4th 877, 864 P.2d 460, 26 Cal.Rptr.2d 189, 1993 Cal. LEXIS 6369, 93 Cal. Daily Op. Service 9616, 93 Daily Journal DAR 16468 (CA 1993)

COMMENTARY: Testimony was received from the prosecutor's handwriting expert.

1995

728. *People v Tai*, 37 Cal. App. 4th 990, 44 Cal. Rptr.2d 253 (1 Dist 1995)

In a credit card case, the Fifth Amendment does not protect against compelling of handwriting exemplars, and the expert may testify as to disguise of same, which is evidence of consciousness of guilt.

COMMENTARY: Some years ago I was asked to research whether a Fifth Amendment privilege could be asserted by a claimant in a civil case when asked whether his evidential document had been falsified. The Matthew-Bender publication, *California Points and Authorities. Law and Motion Practice*, Vol. 6: "Discovery," said that Plaintiff waived right against self-incrimination, to the extent that it actually exists, by filing action with reference to the relevant factual issue. The idea invites Defendant to embark on an interesting series of enquiries.

1996

729. *In re Carlos Jamie Avena*, 12 Cal 4th 694, 909 P.2d 1017, 49 Cal Rptr. 2d 413, 1996 Cal. LEXIS 201, 96 Cal. Daily Op. Service 848, 96 Daily Journal DAR 1257 (CA 1996)

COMMENTARY: At trial a handwriting expert had testified there was "a high degree of probability" that an officer who denied writing the letters "PCP" on a

730. *People v Jones*, 13 Ca. 4th 535, 917 P.2d 1165, 54 Cal. Rptr. 2d 42, 1996 Cal. LEXIS 3255, 96 Cal. Daily Op. Service 4833, 96 Daily Journal DAR 7769 (CA 1996)

COMMENTARY: Jerry Owens, handwriting expert with Fresno Police Department, determined a Don Ray Hill and a Troy Lee Nones were the same person

1997

731. *People v Hines*, 15 Cal. 4th 997; 938 P.2d 388; 64 Cal. Rptr. 2d 594; 1997 Cal. LEXIS 2968; 97 Cal. Daily Op. Service 5038; 97 Daily Journal DAR 8258 (CA 1997)

When a police officer went to arrest Defendant, he was sitting. "On a small table in front of the chair where defendant had been sitting were two handwritten notes, each

containing a list of the guns stolen from the Roberts home, with a price next to each gun. David Crowe, an examiner of questioned documents for the California Department of Justice, testified that defendant had written one of the notes and that Randal Houseman had written the other.”

Houseman was Defendant’s partner in crime and had been tried and convicted of murder in a separate trial. A mother and daughter were the victims, and the motive was robbery.

COMMENTARY: The case provides a compelling reason why one should conduct some businesses away from one’s residence. However, hopefully Hines remembered to file an IRS Form 8829.

732. *People v Scheid*, 16 Cal. 4th 1, 939 P.2d 748, 65 Cal. Rptr. 2d 348, 1997 Cal. LEXIS 3701, 97 Cal. Daily Op. Service 5701, 97 Daily Journal DAR 9176 (CA 1997)

In a murder conviction the Court of Appeals reversed, finding admission of a photograph of the murder scene was sufficiently prejudicial. The Supreme Court reversed the Court of Appeals as to the photograph and remanded to the trial court to consider remaining issues raised by defendant. In search of another person’s residence, police found a notebook with directions to, and a diagram of, the victims’ house. The prosecutor’s handwriting expert opined that defendant wrote the directions, but, on cross-examination, he acknowledged he could not attribute the diagram to anyone. Defendant’s left thumbprint was on the page.

COMMENTARY: As with handwriting, so with a fingerprint on documents, so far there is never indication anyone’s handwriting or fingerprint is considered than that of defendant.

2000

733. *People v Ayala*, 23 Cal. 4th 225, 1 P.3d 3, 96 Cal. Rptr. 2d 682, 2000 Cal. LEXIS 4545, 2000 Cal. Daily Op. Service 4490, 2000 Daily Journal DAR 6037 (CA 2000)

COMMENTARY: A handwriting expert testified for the defense.

734. *People v Sakarias*, 22 Cal. 4th 596, 995 P.2d 152, 94 Cal. Rptr. 2d 17, 2000 Cal. LEXIS 2060, 2000 Cal. Daily Op. Service 2379, 2000 Daily Journal DAR 3177 (CA 2000)

COMMENTARY: First degree murder conviction and death penalty were affirmed. A handwriting expert testified defendant had signed the pawnshop receipt for the victim’s property and wrote the victim’s address on a charge slip.

2002

735. *People v Hughes*, 27 Cal. 4th 287, 39 P.3d 432, 116 Cal. Rptr. 2d 401, 2002 Cal. LEXIS 276, 2002 Cal. Daily Op. Service 738, 2002 Daily Journal DAR 961 (CA 2002)

COMMENTARY: A first degree murder conviction and death penalty are affirmed. A handwriting expert's testimony was received.

2003

736. *People v Neal*, 31 Cal. 4th 63, 72 P.3d 280, 1 Cal. Rptr. 3d 650, 2003 Cal. LEXIS 4426, 2003 Cal. Daily Op. Service 6149, 2003 Daily Journal DAR 7693 (CA 2003)

Defendant's murder conviction was reversed because it was error to admit confessions obtained in violation of *Miranda*. A questioned documents expert had opined that defendant had written a note left at the murder scene in the name of another person. Without admission of the two confessions, the Supreme Court said defendant would have had a strong incentive to challenge this expert testimony.

COMMENTARY: There had been a deliberate and continued violation of *Miranda* guidelines. At page 671 the decision states: "In a free society, we place the police in a position of unique power, but only on condition that they will do their best to uphold the law, and to enforce it nobly and fairly. Their ability to function effectively depends upon their credibility in that role. The community must trust that they do not operate by deliberately violating the very standards they are sworn to observe. When the police dishonor proper procedures, community respect for the police, and for the law itself, is undermined. (See *In re Gilbert E.*, *supra*, 32 Cal.App.4th 1598, 1602, 38 Cal.Rptr.2d 866.)"

737. *People v Snow*, murder conviction reversed, 44 Cal. 3d 216, 242 Cal. Rptr. 477, 746 P.2d 452, 1987 Cal. LEXIS 461 (CA 1987); murder conviction on retrial affirmed, 30 Cal. 4th 43, 65 P.3d 749, 132 Cal. Rptr. 2d 271, 2003 Cal. LEXIS 2072, 2003 Cal. Daily Op. Serv. 2875, 2003 Daily J. DAR 3671 (CA 2003); rehearing denied, 2003 Cal. LEXIS 4190 (CA 2003); *certiorari* denied, *Snow v California*, 157 L.Ed.2d 747, 124 S.Ct. 922, 2003 U.S. LEXIS 9042 (US 2003); habeas corpus proceeding, *People v Snow*, 2003 Cal. LEXIS 10400 (CA 2003); motion granted, application granted, 2004 Cal. LEXIS 3073 (CA 2004)

This discussion has to do with the report at 2003 Cal. LEXIS 2072.

At [*23-24]: "Although the .38-caliber revolver with which Koll was killed was not found, defendant possessed .38-caliber ammunition, suggesting he owned or had access to a handgun that could fire such ammunition. Perhaps most damning, the telephone number of Koll's pharmacy was written in defendant's spiral-bound notebook. Although defendant denied having written it, a prosecution handwriting expert found good indications he had, and the defense offered no other explanation for the number's presence in the notebook."

During argument, one of two defense attorneys planned to argue the expert evidence. However, the judge had a different understanding and stopped him from addressing the handwriting issue. There was no formal objection and no statement on the record as to what would have been argued. The other attorney did not take up the issue. The Supreme Court said that might have been a tactical decision and the overnight adjournment

permitted preparation for full argument the next day.

COMMENTARY: Expert opinion as to maker of handwritten numerals is received, though it is unclear whether the term “good indications” is the expert’s or is how the Supreme Court describes the opinion. The forestalled argument on the handwriting issue is an object lesson that counsel should assure that all rulings and understandings are clear on the record, while making an offer of proof or representation for anything the court curtails, leaving no doubt as to the harm it does to one’s case. Appeal and supreme courts take experts to task for basing opinions on speculation, but they themselves speculate quite regularly and conveniently, as they did in this case in basing their decision in part on the speculation about a possible tactical decision not to argue further on an issue.

2004

738. *People v Horning*, 34 Cal. 4th 871, 102 P.3d 228, 22 Cal. Rptr. 3d 305, 2004 Cal LEXIS 11890, 2004 Cal. Daily O P. Service 11064, 2004 Daily Journal DAR 14997 (2004) 22 Cal. Rptr. 3d 305, at page 313, reads:

“McCullough's Jeep Cherokee was found in Stockton on September 21, 1990. The mats in the back were moist and the vehicle was very clean. The Jeep contained checks in McCullough's name and car ownership documents. An expert testified that an unknown person other than McCullough had signed McCullough's name to some of the checks and car ownership documents. It appeared the person had tried to trace McCullough's signature. One of the documents contained the date September 21, 1990. Defendant's thumbprints and fingerprints were found on two of the car ownership documents. No other usable fingerprints were found inside the Jeep. Some usable prints were found on the Jeep's exterior, but they did not belong to defendant or any of several others with whom they were compared.”

McCullough was the murder victim.

COMMENTARY: The anti-expert experts either forgot or never realized handwriting expertise is not solely concerned with who did write something but is equally concerned with who did not write something. In this case the latter concern is all that is reported. It served as one small, but effective, piece of the large picture puzzle of a homicide.

739. *People v Valdez*, 32 Cal. 4th 73, 83 P.3d 296, 8 Ca. Rptr. 3d 271, 2004 Cal. LEXIS 4, 2004 Cal. Daily Op. Service 108, 2004 Daily Journal DAR 133 (2004); *certiorari* denied, *Valdez v California*, 2005 U.S. LEXIS 1458 (2005)

“A police check and credit fraud expert compared signatures on the victim’s Department of Motor Vehicles handwriting exemplar with that on the treasury check. The analysis was inconclusive, but similarities existed as to the signatures.”

COMMENTARY: There are *some* similarities between any two writings in the universe. They both exist, both are writings, and both consist of marks with a writing

medium on a surface.

2005

740. *People v Blair*, 36 Cal. 4th 686, 115 P.3d 1145, 31 Cal. Rptr. 3d 485, 2005 Cal. LEXIS 8227, 2005 Cal. Daily Op. Service 6622, 2005 Daily Journal DAR 9057 (CA 2005)

COMMENTARY: Defendant represented himself in an earlier case of poisoning and was convicted. In this case, brought when one of his victims died from the poison, he again represented himself and was convicted. A police handwriting analyst testified that writing on an envelope containing information where to obtain poison matched defendant's first and third requested exemplars but that the second exemplar was disguised.

741. *People v Carter*, 36 Cal. 4th 1215; 117 P.3d 544; 32 Cal. Rptr. 3d 838; 2005 Cal. LEXIS 8910; 2005 Cal. Daily Op. Service 7222; 2005 Daily Journal DAR 9833 (CA 2005)

The complete description of the handwriting expert testimony is this:

"Sandra Homewood, an examiner of questioned documents employed by the San Diego County District Attorney's Office, testified that in comparing exemplars of defendant's handwriting with entries found in his address book. Homewood discerned several 'unique and conspicuous characteristics' and made a positive identification' that defendant had written in his address book the names Susan Loyland (rape victim Barbara S.'s tenant, see, ante, at pp. 1223–1226), Janette Cullins, Cathleen Tiner, and Susan Knoll. With regard to the slip of paper that read 'SHYLAS,' Homewood was unable to eliminate defendant or identify him as the writer. In comparing the note to an exemplar of Janette Cullins's handwriting, Homewood indicated there existed 'very strong indications' that Cullins had written it."

COMMENTARY: The three levels of assurance expressed in Homewood's opinions suggest she takes care to evaluate her evidence in light of objective guidelines.

742. *People v Gray*, 37 Cal. 4th 168, 118 P.3d 496, 33 Cal. Rptr. 3d 451, 2005 Cal. LEXIS 9351, 2005 Cal. Daily Op. Service 7651, 2005 Daily Journal DAR 10483 (Cal. 2005); time for granting or denying rehearing extended, *People v Gray*, 2005 Cal. LEXIS 10710 (Cal. 2005); rehearing denied, *People v Gray*, 2005 Cal. LEXIS 12015 (Cal. 2005); *certiorari* denied, *Gray v California*, 549 U.S. 827, 127 S. Ct. 38, 166 L. Ed. 2d 45, 2006 U.S. LEXIS 5917 (U.S. 2006)

At page [*8]: "Later in the morning of April 25, after he killed Reed, defendant took a further step to create a new identity for himself. Evidence showed that on that morning he took a bus to the University of Southern California Medical Center and, at 11:20 a.m., sought and received from the hospital an identification card in the name of 'Mario Davis.' An expert testified the handwriting on the hotel check-out receipt (Lewis Gray) and the check-in receipt (Mario Davis), and defendant's handwriting exemplars were all written by the same person." The expert was Deputy David Crisp.

COMMENTARY: To have such an opinion correct entails painfully detailed work.

2007

743. *In re Ronald Lee Bell, on Habeas Corpus*; 170 P.3d 153, 67 Cal.Rptr.3d 781, 42 Cal.4th 630 (CA 2007)

At pages 790-791: “Petitioner claims next that Dorton was not credible, based on his alleged ‘showing’ that Dorton lied when she denied meeting defense investigators at a Carrows Restaurant in El Cerrito and denied signing the declaration in her name recanting her trial testimony. The sole evidence that Dorton signed the declaration, which petitioner withdrew under compulsion of the California Rules of Professional Conduct, was the ‘impression’ of a forensic document examiner that Dorton had signed and initialed the declaration while trying to distort her signature and initials. In the view of the document examiner, the initials on the first page were ‘probably’ written by Dorton, the initials on the second page were too ‘scrawled and brief to support an opinion, and the signature was too ‘poorly written’ to support a positive identification, either, but the probability that she initialed the first page nonetheless ‘strongly indicated’ that she had signed the third page.

“The remaining evidence, however, supported Dorton’s testimony that she never met with defense investigators and, thus, never signed the declaration. Neither defense investigator could identify Dorton in a photo lineup as the woman they had interviewed and who had signed the declaration. The investigators also claimed that the woman identifying herself as Dorton had attended the interview with a man identified as her cousin, Marchon King—— yet petitioner, even after locating King, *791 declined to have him testify. (See Evid. Code, §§ 412.) The referee’s finding that Dorton did not recant is therefore supported by substantial evidence, and we accept his finding.”

COMMENTARY: I reproduce the larger context for this case to illustrate how other evidence and actions can either confirm or undermine the handwriting expert’s opinion, in this case undermining that of the defense examiner. Inferring that the signature on page 3 is genuine because the initial on page one is probably genuine violates standards. First, an expert may not base an inference (here regarding the signatures) on his own prior inference (here regarding the initial). Second, an opinion regarding a writing must be based on observations of the writing itself. Third, opinions regarding initials must be based on exemplars of initials and opinions regarding signatures must be based on exemplars of signatures. Someone else may be able to name more violations by this one opinion.

2011

744. *People v Moore*, 51 Cal. 4th 1104; 253 P.3d 1153; 127 Cal. Rptr. 3d 2; 2011 Cal. LEXIS 6170 (CA 2011)

COMMENTARY: Testimony of a handwriting expert was received.

2013

745. *People v Williams*, 56 Cal.4th 630, 156 Cal. Rptr. 3d 214, 299 P.3d 1185 (CA 2013)

The jury convicted Williams of two murders and other crimes with special circumstances. His conviction and death penalty were affirmed. There was a question of whether Defendant had flown to New York, which occasioned this interchange regarding a hotel there:

“The Hotel Stanford registration card was next mentioned at trial during the testimony of Robert Greenwood, a handwriting expert who testified for the prosecution. On cross-examination, defense counsel raised the issue by questioning Greenwood about any documents he had reviewed that he had been unable to conclude were written by defendant. Greenwood mentioned the Hotel Stanford registration card as one such item, and defense counsel proceeded to ask Greenwood about his comparisons of the signature on this registration card to other documents. On redirect examination, the prosecutor asked Greenwood about the Hotel Stanford registration card, and Greenwood clarified that he had never attempted to compare the signature on it to any other documents because it was crammed into a small signature box on the registration form. Defendant contends that the prosecutor committed misconduct by eliciting testimony concerning inadmissible evidence. We discern no misconduct. The prosecutor's redirect examination briefly touched on the Hotel Stanford registration card only because defense counsel had first raised and pursued it during defense cross-examination.”

Later the prosecutor wanted to call the hotel manager as a rebuttal witness to authenticate the registration, but the court did not permit it. When the persecutor asked to reopen his case in chief to do so, that was not permitted either. All this only hurt the prosecutor's case so there was no harm to Defendant.

COMMENTARY: The handwriting expert did authenticate a registration as being by Defendant at a California motel where he prepared for his New York trip. There has been research on how signing in a preprinted box does or does not alter one's ordinary way of signing. Greenwood could have been confronted with such research to undermine his scientific qualities. If the research offered inferences favorable to the defense, all the better for a cross-examiner.

2014

746. *People v Boyce*, 59 Cal.4th 672, 175 Cal. Rptr. 3d 481, 330 P.3d 812 (CA 2014)

The most room seems given to Defendant's mental impairment which was ruled not impaired enough to excuse his criminality. The least room seems given to the handwriting expertise at page 684: “A handwriting expert compared the numbers written on the salon business card with known exemplars of defendant's handwriting and opined that they did not match.” The numbers were the PIN for a victim's ATM card.

COMMENTARY: Numbers written on a cabling card and numbers written on other

paper surfaces or as part of letter-text can differ quite notably. Whether they “matched” without further details is almost meaningless.

747. *People v Lucas*, 60 Cal.4th 153, 177 Cal. Rptr. 3d 378, 333 P.3d 587 (CA 2014)

This case has extensive discussion of issues related to admission of handwriting expertise. Additionally, some of these issues have layers of issues. To obtain the full scope of the various decisions regarding handwriting expertise one must read the case report itself. There are two allied issues that will not be considered here, namely lay handwriting evidence and expertise in eyewitness evidence. I will only say that, if I were a juror, I would be skeptical of any eyewitness expert who used his own eyes in developing the testimony he would give as a witness, simply because that is his objective in presenting the evidence his eyes witnessed.

The admissibility of the state’s handwriting expert, John J. Harris, was challenged in the *in limine* hearing held to determine whether Defendant should be made to answer to the charges against him. This challenge was denied with the assurance the defense could reassert it at trial by developing a better foundation. That was not done at trial, only a claim the denial at the *in limine* hearing preempted the defense from accepting the judge’s invitation to do the work needed. Also, a test that defense attorney wanted to give to Harris on the witness stand was not allowed because, among other considerations, it would consume far too much time for the assistance it would give the court.

The court gives extensive reasons for disallowing an offer of expert testimony by the defense and summarizes the outcome:

“Defendant argues that the trial court’s assertedly erroneous pretrial rulings also had the effect of foreclosing his ability to present at trial the testimony of his defense witnesses, Dr. Saks or another purported handwriting expert, law professor Dr. Mark Denbeaux, or to allow in-court testing of Dr. Harris during cross-examination at trial. As discussed, ante, at pages 73-77, the court excluded Dr. Saks and any in-court handwriting testing in connection with defendant’s challenge to the admissibility of the prosecution’s handwriting evidence during *in limine* proceedings. Defendant claims that the *in limine* rulings precluded him from effectively contesting the reliability of the state’s handwriting expert at trial, thereby violating his state and federal constitutional rights to due process, compulsory process, confrontation, trial by jury and to present a defense. But defendant has forfeited this claim because he did not offer the contemplated witnesses or evidence for purposes of challenging the credibility of the state’s handwriting expert *at trial*. (*People v. Valdez* (2004) 32 Cal.4th 73, 108.) Accordingly, at trial the trial court was not presented with these issues and never made any ruling prohibiting the presentation of this evidence.” [Emphasis in original.]

However, at trial handwriting expert David Oleksow testified for the defense on the claimed weaknesses in Harris’ testimony.

COMMENTARY: Presumably Oleksow would offer far better testimony for the defense than Saks and Denbeaux put together. Do read the report to arm yourself with

reasons the trial court and the California Supreme Court found compelling to justify dismissal of Saks. Presumably the same compelling reasons would compel the court to invite Denbeaux out the door, but that is an interpretation not a journalistic report.

I had the pleasure of meeting Harris only once, and I was impressed by his gentlemanly bearing. He has written some fine journal papers, his one on the so-called Howard Hughes Mormon, or Dummar, will being my favorite. See: *31 Journal of Forensic Sciences*, “Document evidence and some other observations about the Howard R. Hughes ‘Mormon Will’ contest,” 365-75 (Jan. 1986).

An issue raised by this case that I had not addressed previously was brought to my attention, and here is the meat of that applicable section from pages 223-224:

“(8) The Kelly standard provides a framework within which courts can analyze the reliability of expert testimony based on new or novel scientific methods or techniques.[31] As we have acknowledged, there is no clear definition of science under this test. (*People v. Stoll* (1989) 49 Cal.3d 1136, 1155 [265 Cal.Rptr. 111, 783 P.2d 698].) Accordingly, the application of that term is guided by resort to the ‘narrow “common sense” purpose’ behind the rule: ‘to protect the jury from techniques which ... convey a “misleading aura of certainty.”’ (Id. at pp. 1155-1156, quoting *Kelly*, supra, 17 Cal.3d at *224 pp. 30-32.) The danger of a false aura of certainty is acute where the ‘technique or procedure appears in both name and description to provide some definitive truth which the expert need only accurately recognize and relay to the jury,’ such that a lay jury might treat the procedure as ‘objective and infallible.’ (*Stoll*, supra, at p. 1156.) The analysis is designed to address ‘scientific evidence or technology that is so foreign to everyday experience as to be unusually difficult for laypersons to evaluate.’ (*People v. Venegas* (1998) 18 Cal.4th 47, 80 [74 Cal.Rptr.2d 262, 954 P.2d 525].) 224

“In contrast, when an expert's methods are based on everyday processes of observation and analysis, we trust jurors to ‘rely on their own common sense and good judgment in evaluating the weight of the evidence presented to them.’ (*People v. Venegas*, supra, 18 Cal.4th at p. 80; see *People v. McDonald* (1984) 37 Cal.3d 351, 372 [208 Cal.Rptr. 236, 690 P.2d 709] (*McDonald*) [‘[w]hen a witness gives his personal opinion on the stand — even if he qualifies as an expert — the jurors may temper their acceptance of his testimony with a healthy skepticism born of their knowledge that all human beings are fallible’].)”

2015

748. *People v Charles*, 61 Cal.4th 308, 188 Cal. Rptr. 3d 282, 349 P.3d 990 (CA 2015)

Charles’ conviction of murdering his parents and brother was upheld. Part of the evidence was the common unburdening of one’s soul to a jailmate who dutifully passes it all on, in this case in the form of Charles’ own autograph letter signed. “William Hatch, a handwriting comparison expert, compared the jailhouse letter to exemplars of defendant's handwriting and opined that defendant had not written the letter.”

COMMENTARY: The officer who asked Charles about the letter considered the answer as admission he had written it since, being asked about the contents and meaning, Charles did not answer with denial of authorship on occasions the interviewer thought he should have. It is not stated whether at any time Charles was asked whether he had written the letter or had said he did not. In any case, a person of critical thinking skills would well wonder whether oneself would consider the evidence described as proof beyond a reasonable doubt.

When I was on the only jury panel I ever served with, we were told proof beyond a reasonable doubt is that which leaves you with an abiding conviction. I thought Nazis had an abiding conviction that all who perished in their prison camps and by any kind of murderous action of theirs well deserved it. I cannot imagine any intelligent person not having a more than reasonable doubt that such definitions of a reasonable doubt in our courts of law are the least bit reasonable and anything but doubtful.

2016

749. *People v Masters*, No. S016883 (CA 2016)

The opinion of a handwriting expert was received.

NOTE: California is represented by far more case reports than most other states. I believe we are not decidedly more litigious, but we do have about a tenth of the nation's population, so we have a bit more suits to file in order to come up to what presumably would be a *per capita* national average. A related issue is the number of quite peculiar actions and manners of obtaining objectives these case reports represent. There I take pride as a Californian.

Our creativity has given us the leading edge in not just criminality but most other essential activities of any advanced and civilized society. Our creativity has enriched us with leadership in the digital industry, in agriculture, in varieties of insanity, with the greatest extremes of extremist groups, with first place in almost all aspects of the entertainment industry, in the various arts and various artsy arts as well as new and weird ways of the inartistic arts, in the most humanly mixed of human populations, and any other human endeavor or lack of endeavor, having more than our fair share of freeloaders.

This note is just to remind readers of other locales that we Californians are merely the most accurate profile of the best and worst your populations have not yet brought to full flower or to emptiness of value. However, do visit us, but do not add to our population nor to its peculiarities.

G. COLORADO CASES.

1. *Colorado Trial Courts.*

I have no case reports for Colorado trial courts.

2. *Colorado courts of appeal.*

2012

750. *People v Davis*, Court of Appeals No. 08CA0156. (CO App. Div. VII. 2012)

COMMENTARY: A police detective testified as a handwriting expert without objection, and another expert backed up the testimony.

2016

751. *Shimizu, In re the Estate of Calvin Shimizu, a/k/a Calvin Kiyoshi Shimizu, a/k/a Calvin K. Shimizu; Szoke v Trujillo-Dickson, et al.*, 2016 COA 163 (Ct. App. CO Div. II 2016)

A handwriting expert testified that Decedent's signature was written by one of the beneficiaries of the will.

COMMENTARY: Other evidence persuaded the probate court the expert was mistaken. Award of attorney fees at trial was reversed since Szoke's case was not groundless. However, attorney fees were awarded on appeal since her case was vexatious. The Appeal Court explains the distinction but the different escapes me, so you might wish to read the case report for yourself if the terminology is on your list of must-know items.

3. *Colorado Supreme Court.*

2000

752. *In The Matter of the Estate of Spicer H. Breeden; Connell and Breeden v Stone*, 992 P.2d 1167, 2000 Colo. LEXIS 11, 2000 Colo. J. C.A.R. 284 (Colo. 2000)

"In addition, the probate court considered the testimony of a number of expert witnesses, including [*5] two forensic toxicologists, two forensic psychiatrists, a forensic document examiner, and two handwriting experts. After considering conflicting evidence from the various expert witnesses, the court concluded that the decedent possessed the motor skills necessary to write his will and that his handwriting on the holographic will was unremarkable when compared to other writing exemplars."

COMMENTARY: Decedent, who was addicted to alcohol and drugs, disinherited his relatives. His heavy use of these chemicals was found not to have impaired his testamentary capacity. The appeal decision considers two issues. First, had "the probate court correctly applied the insane delusion and Cunningham elements tests" to determine

testamentary capacity? Second, had the court correctly refused to dismiss two parties to the suit and so prevent their testimony under the dead man's statute?

H. CONNECTICUT CASES.

1. Connecticut trial courts.

1999

753. *Cardona v Negron*, 1999 Conn. Super. LEXIS 2131

"A handwriting expert, Clarissa M. DeAngelis, presented credible testimony verifying that by examining the handwriting on a copy of the letter, she concluded that it was authored by the plaintiff. The court finds not credible [*5] the plaintiff's testimony that she never wrote the letter."

COMMENTARY: DeAngelis belonged to WADE which had been the object of much misrepresentation, hopefully only by people who were excusably ignorant.

2001

754. *Kaufman v Cornerstone Bank*, 2001 Conn. Super. LEXIS 2497

"The attorney trial referee, in concluding that the plaintiff did not prove his claim of vexatious litigation, pointed out that the defendant employed a handwriting expert [*11] to verify the authenticity of the plaintiff's signature on the promissory note, and that Cornerstone made the loan to Mascia on condition that the plaintiff co-sign the note. The referee's recommendation that judgment enter for the defendant follows legally and logically from his findings of fact." The expert testified.

COMMENTARY: This is a good example how expert testimony, singly or combined with other evidence, can have several ramifications.

755. *Benvenuti Oil Co., Inc., v Foss Consultants, Inc., et al.*, 2003 Conn. Super. LEXIS 2177 (CT Super 2003)

Expert Streeter testified to a false signature on what apparently was the original of a document submitted in court in fax form. There is extended discussion of what made the fax a forgery or copy of a forgery and thus a fraud on the court. Streeter's opinion is given several pages.

COMMENTARY: Though there was no challenge as to reliability, the extensive discussion of the expert's opinion shows the weight given it.

2004

756. *General Electric Capital Corp. v Barber*, 2004 Conn. Super. LEXIS 885

Ana Kyle testified for plaintiff that defendant signed the questioned document. Defendant presented no evidence other than his denial. The judge decided Ms. Kyle's evidence should be backed by other evidence so he ruled plaintiff did not meet the burden of proving authenticity.

COMMENTARY: Ms. Kyle is a member of NADE and wrote two thought provoking texts on the Lindbergh kidnaping case.

757. *Vieira v Vieira, et al.*, 2004 Conn. Super. LEXIS 2740 (Superior Ct. CT, Waterbury 2004)

Plaintiff called Jeffrey Lubner, of Illinois State Police, as handwriting expert, and defendants called James Streeter, of Connecticut State Police. "Predictably, their opinions on the authenticity of the will signatures were opposed, but they did agree on the range of possible conclusions, from positive to highly probable to inconclusive." Lubner said he was positive the will signatures were false, and Streeter said "that it was highly probable that the questioned signatures and the known signatures have the characteristics of the same writer." Plaintiff proved the forgery by clear and convincing evidence.

Contrary to her previous statement, the notary testified she had notarized the will August 18, 2000, and not May 22, 2000, thus she was the only witness with "nothing to gain and everything to lose." Decedent had died August 11, 2000, a week before the writing of the signature.

COMMENTARY: Mr. Streeter, well-qualified as a police expert, is not the first, and will not be the last, handwriting expert tricked by a well imitated signature. Fortunately, in this case it was physically impossible that the signatory could have written it. It is a sobering lesson for all of us to be most diligent and detailed in our forensic examinations. How many forgeries have prevailed because a handwriting expert had a hopefully momentary and rare lapse in being fully competent and conscientious? We can never know.

2005

758. *Bryn, et al., v Bryn*, 2004 Conn. Super. LEXIS 2676 (Conn. Super. Ct. 2004); 2005 Conn. Super. LEXIS 2713; affirmed, 944 A.2d 442, 2008 Conn. App. LEXIS 151 (Conn. App. 22, 2008)

At page [*8] of 2005 Conn. Super. LEXIS 2713: "Peggy Kahn, the handwriting expert, confirmed that [Defendant] Roger was the author of the graffiti at the Old Greenwich railroad station. She clearly pointed out several identifying characteristics in the graffiti which she identified as consistent with the defendant's writing style. For example, the exclamation points, underlining, reference to 'fatball,' the letter 'A,' the letter 'M' and other characteristics of Roger's handwriting. This court is clearly satisfied that the

defendant authored the referenced graffiti.”

COMMENTARY: The plaintiffs proved much of their complaints against defendant, but they failed to show “irreparable harm and lack of an adequate remedy at law.” Thus, their request for an injunction against defendant was properly denied.

759. *New Milford Bank v Jajer, et al.*, 2005 Conn. Super LEXIS 2358 (Judicial District of Litchfield, Aug. 30, 2005)

A major issue in the earlier portion of the proceeding was whether Mrs. Jajer had signed a mortgage deed in plaintiff bank’s favor. “However, the plaintiff did prove that the signature bearing Mrs. Jajer’s name on the mortgage deed was signed by the same person who signed the mortgage note through the expert testimony of James L. Streeter on handwriting and document examination and identification.... The court found the testimony credible and persuasive.... The court has itself compared the signatures on the mortgage deed with that on the mortgage note and finds them to have been signed by the same person.” The issue could not be raised in the present portion of the proceeding “under principles of res judicata and collateral estoppel.”

COMMENTARY: There are other interesting aspects to the case, such as defense counsel could not be present in a prior proceeding because he had to be present at a hearing on his own disbarment.

760. *Stay Alert Safety Services, Inc., v Fletcher*, 2005 Conn. Super. LEXIS 1915

“Dr. Marc Seiter is a handwriting expert. He concludes, after comparing numerous other signatures of Christopher Fletcher, that the defendant did in fact sign the employment contract. The court agrees with the opinion of Dr. Seiter and finds the defendant did in fact sign [*3] the employment contract.”

COMMENTARY: I do not know of a Marc Seiter, but there is a Marc Seifer, so the name might be misspelled. Dr. Seifer issued a monograph in which he maintains the “Mormon Will” that Howard Hughes allegedly gave to Melvin Dummar is genuine. See *The Handwriting Forgeries of Howard Hughes*, Kingston, RI, Meta Science Publications, 1987.

761. *Superior Amusement Companies, Inc., v Night Games Corp., et al.*, 2005 Conn. Super. LEXIS 32

“Consistent with his denial of the admission request, Riggio denied at trial that he signed the agreement at issue. Riggio produced an [*14] expert at trial who testified that, in his opinion, the signature on the document ‘was not written by Daniel Riggio’ and supported his decision with reasons. The ATR believed Superior Amusement’s expert to be more credible and, as previously discussed, found the signature on the document to be Riggio’s signature.

“The trial consisted, in part, of a classic ‘battle of the experts.’ The fact that Riggio didn’t merely deny that his signature was genuine, but produced a handwriting expert in

support of his position, evinces that the denial was in good faith.

“In view of the foregoing, the court finds that Riggio’s failure to admit the genuineness of his signature was reasonable. Therefore, the court denies the application of Superior Amusement for an order requiring the payment of reasonable expenses incurred by it in proving that Riggio’s signature was genuine.”

COMMENTARY: Without expressing an opinion on good faith in this case, some of us have experienced litigants with such good faith that they assiduously shop until they find an expert who can give plausible reasons for any opinion. I doubt that the court’s logic in this case is a legal precedent even in Connecticut.

2007

762. *Ridgefield Supply Company v Design Build Associates of Westchester, Inc, et al.*, 2007 Conn. Super. LEXIS 3097 (Super. Ct. CT Stamford-Norwalk 2007)

COMMENTARY: Defendant Al Alper denied having signed an application and a guarantee on a debt. “An expert in signature comparison, Mr. Robert Baier, was found by this court to be qualified to render expert opinion.” Baier said Alper had not signed the documents, and the court found so from “the most credible evidence.”

763. *Schapperoew v Dowdy*, 2007 Conn. Super. LEXIS 3536

“The plaintiffs, in challenging the occupancy agreement, presented a handwriting expert, Anna Kyle. She had previously testified as an expert in well over one hundred (100) cases in both federal and state courts. In [*11] her opinion, the father had not signed the Occupancy Agreement.

“She had the father in her office, he sat at a desk where he gave four handwriting exemplars. She compared the signatures from the exemplars, a diagnostic laboratory slip from October 3, 1996, part of a rental agreement from March 22, 2005, five checks from 2006 and one from 2005 and the rental agreement dated May 1, 2003 with the signature on the Occupancy Agreement of January 7 or 8, 2007. (Plaintiff’s Exhibit # 7 and 8) and (Defendant’s Exhibit # D).”

COMMENTARY: Ms. Kyle took requested exemplars from the opposing party, so she did not violate the *post litem motam* rule. She also had a good number of collected exemplars to go with the requested exemplars. Ms. Kyle, who spells her first name with one “n,” is a member of NADE and author of two well researched books on the Lindbergh kidnaping case, *The Dead Poets Plus One* and *Two Men and One Pair of Shoes*.

2. Connecticut Court of Appeal.

1993

764. *Churchill, et al., v Skjerdings*, 31 Conn. App. 247 (CT App. Ct. 1993)

COMMENTARY: The trial court had properly acted within its discretion in qualifying Anna Dobensky and Patricia Ann Senich as handwriting experts since they testified to their experience in the issue of signatures on wills.

1995

765. *Lurie & Associates, Inc., v Tomik Corp., et al.*, 37 Conn. App. 865 (Ct. App. 1995)

Award of \$1,000 to Plaintiff for fees for handwriting expert reversed since there is no statutory provision to do so as required in Connecticut.

COMMENTARY: I assume that does nothing to prevent the expert from charging and collecting proper fees from the client. It is suggested that, whenever one party causes the other to go to expenses to defeat an unjust claim, the claimant causing the expense should pay for it. Those with far more power and money than integrity can unjustly defeat the financially strapped by forcibly exhausting what scant resources their victims have.

1998

766. *Churchill, et al., v Allessio, et al.*, 51 Conn. App. 24 (CT App. Ct. 1998)

“At issue in this case was whether Churchelow’s signature actually appeared on the 1967 will. In an attempt to prove that Churchelow had, in fact, signed the 1967 will, the defendants retained a document examiner, *34 John Sang, to authenticate the signature appearing on the 1967 will as Churchelow’s true signature. The plaintiffs claim that the handwriting exemplars relied on by Sang in his comparisons were, themselves, not properly authenticated and, therefore, could not have provided the basis for those comparisons.”

COMMENTARY: A two-word reply from the justices: “We disagree.”

1999

767. *State v Stevenson*, 53 Conn. App. 551, 733 A.2d 253, 1999 Conn. App. LEXIS 218 (Conn. App. 1999)

James Streeter answered on cross-examination that it is possible another document examiner could have come to a different opinion, at least as to degree of certainty. In argument defense counsel used that remark to downplay Streeter’s testimony. The prosecutor argued on rebuttal that, if Streeter had said it is possible someone other than defendant could have written the questioned document, defense would have called Streeter.

This was proper, common sense argument.

COMMENTARY: Attorneys and judges are free to interpret, reinterpret or misinterpret what experts say in order to support any enticing conclusion.

768. *Berty v Gorelick, et al.; Gorelick, et al., v Montanaro*, 1996 Conn. Super. LEXIS 2091; affirmed, 59 Conn. App. 62, 756 A.2d 856, 2000 Conn. App. LEXIS 349 (CT App 2000); *certiorari* denied, 761 A.2d 751, 254 Conn. 933 (CT 2000)
756 A.2d 856:

At page 68: “Other testimony [*10] at trial, not explicitly mentioned in the court’s memorandum of decision but contained in the trial transcript, pertains as well to Gorelick’s misuse of Berty’s funds. [Footnote omitted.] For example, Gorelick admitted that he had forged Berty’s name on at least two checks payable to himself that totaled approximately \$19,477. Gorelick produced a written authorization to sign checks bearing Berty’s signature, which an expert for Montanaro testified had been altered and cut down from its original size. The expert also testified on the basis of his examination of the state of dryness of the written ink that Berty’s signature was written at a significantly earlier date than the written body of the document. Finally, the expert testified that another letter bearing Berty’s signature exhibited signs of alteration and forgery.”

COMMENTARY: Other document examination skills besides handwriting examination were involved.

2001

769. *American Heritage Agency, Inc., et al., v Gelinas, et al.*, 1999 Conn. Super. LEXIS 1693; affirmed, 62 Conn. App. 711, 774 A.2d 220, 2001 Conn. App. LEXIS 165 (Conn. App. 2001)

“At trial, the parties presented testimony from handwriting experts on the question of the authenticity of the defendant’s signature on the March 1, 1989 minutes of American Heritage Agency, Inc. The defendant’s expert, Ana Kyle, testified that the signature of the defendant on that document was not authentic. The plaintiff’s expert, Clarissa DeAngelis, testified that the signature was authentic.

“The defendant disagrees with the court’s factual findings and requests that we consider the evidence and reach a different conclusion. ‘It is fundamental [*14] appellate jurisprudence that an appellate court does not retry the case and substitute its judgment for that of the trial court. *Malmberg v. Lopez*, 208 Conn. 675, 679, 546 A.2d 264 (1988). Rather, it is the function of the Appellate Court to determine whether the decision of the trial court is clearly erroneous.’ *Century Mortgage Co. v. George*, 35 Conn. App. 326, 329-30, 646 A.2d 226, cert. denied, 231 Conn. 915, 648 A.2d 150 (1994).....

“Here, the court found that the signature on the March 1, 1989 minutes was that of the defendant. The court found that the plaintiff had no reason to forge his signature or to have the defendant’s signature forged on the 1989 minutes. The court found the testimony

of the plaintiff's certified document examiner to be more credible than the testimony of the defendant's examiner."

COMMENTARY: It seems poignant that the decision makes it a point to indicate which expert was certified. I believe DeAngelis is correctly spelled with only one "l."

2002

770. *People's Bank v Curtin, et al.*, 74 Conn. App. 98, 812 A.2d 68, 2002 Conn. App. LEXIS 610 (Conn. App. 2002)

Both sides presented handwriting experts who were equally sure of opposing opinions. The trial court ruled plaintiff had not met his burden to prove fraud by clear and convincing evidence.

COMMENTARY: It is a lot easier to prove simple falsify than fraud or forgery. Likewise, it is a lot easier to prove a writing to be false than to prove who the false writer was. If you can, make your job as plaintiff and your handwriting expert's job easier and so improve your chances of prevailing.

771. *State v Yusuf*, 70 Conn. App. 594, 800 A.2d 590, 2002 Conn. App. LEXIS 349

Defendant sought to impeach testimony of his girlfriend by showing she wrote three letters to him, only one of which she admitted to. Clarissa DeAngelis testified as defendant's handwriting expert, and Kenneth Zercie testified for prosecution on rebuttal.

The letters were admitted into evidence, not for their substantive statements, but so that the jury could evaluate the expert evidence.

COMMENTARY: Typically the jury is instructed to ignore the content when only how the contents were written matters. However, I suspect a bit of reverse psychology goes to work and unintentionally influences the decision. Maybe psychologists have some good advice how to either limit or eliminate such a result. Maybe also good advice on how to be sure the advice is not used by the other side for the undesirable result.

2003

772. *Bieluch v Cook*, 2003 Conn. Super. LEXIS 3473 (Superior Ct Fairfield CT 2003); original judgment of trial court for divorce affirmed, *Cook v Bieluch*, 32 Conn. App. 537, 629 A.2d 1175 (1993); certif. denied, 228 Conn. 910, 635 A.2d 1229 (1993)

This discussion concerns 2003 Conn. Super. LEXIS 3473. Husband, Bieluch, is petitioner, and wife, Cook, is defendant.

At original hearing for divorce action, both parties had graphoanalysts to testify as handwriting experts. Note 2 states: "The defendant's expert had credentials beyond her completion of a three-year correspondence course from the International Graphoanalysis Institute in Chicago, Ill." And Note 7 states: "As the defendant observes, her expert at the trial of the dissolution action, Ana Dobensky, had testified as an expert document examiner

many times in Connecticut Superior Court.” The divorce court found with defendant’s expert that her signature on deeds transferring her real property interests to petitioner were forged. At a grievance hearing to cancel petitioner’s attorney’s license he had an FBI trained expert who said the signatures were genuine. Defendant wife did not participate in the grievance hearing, and presumably her trial expert did not testify. The grievance was dismissed.

Petitioner filed for new trial on issue of the forgery on basis of newly discovered evidence, namely he had no idea his original expert was unqualified as a graphologist or graphoanalyst. However, due diligence would have uncovered readily available evidence of skepticism regarding graphology and its insufficiency in itself to qualify one as a document examiner, one source cited by this decision being National Association of Document Examiners (NADE) and its journal. On basis of failure to exercise due diligence prior to and during the original trial, the petition for a new trial was denied.

As reported in 629 Atl.2d 1175, the Appellate Court affirmed the trial court. One of plaintiff’s complaints was that the trial court credited defendant’s expert and not his.

COMMENTARY: It has long been the official policy of NADE that training solely in character handwriting analysis is insufficient to qualify one to act professionally as an examiner of documents and handwriting. Some twist such cases as this one into saying what they do not, namely that no one with any background in graphology or graphoanalysis can ever be a document examiner. This only underlines the need to read completely a citation given by an opponent before believing that a legal case, or any other authority for that matter, has been accurately quoted and correctly interpreted.

773. *State v O’Neil*, 65 Conn. App. 145, 782 A.2d 209, 2001 Conn. App. LEXIS 421; affirmed, 262 Conn. 295, 811 A.2d 1288, 2003 Conn. LEXIS 3

Defendant’s conviction of attempted murder was reversed and the trial court directed to enter a judgment of not guilty. While in jail, a letter from defendant to his mother was intercepted. Inside was a second envelope with a coded message to an associate to kill the chief witness in defendant’s upcoming murder trial. James Streeter, a document examiner, identified defendant as writer of the letter to his mother and of the coded letter. Michael Birch, a cryptanalyst with the FBI, testified that the coded letter was in a simple substitution code. The case report transcribes the decoded text. The intercepted coded letter was insufficient grounds for a charge of attempted murder.

COMMENTARY: Over the years *FBI Law Enforcement Bulletin* has published a number of interesting articles on making and breaking codes and ciphers. I find that the theory, methods and mathematical techniques have some application to examination and identification of signatures and handwriting. At the very least one’s overall intellectual skills are improved.

774. *State v Ferraiuolo*, 80 Conn. App. 521, 835 A.2d 1041, 2003 App. LEXIS 535; appeal denied, 267 Conn. 916 (Ct. 2004)

Defendant's murder conviction was affirmed after his second trial. On issue of his signature on a *Miranda* waiver form and statement, no expert testified at the first trial. In a suppression hearing at the second, "The handwriting expert, James Streeter, testified that he had examined the signature on the waiver form and statement, and compared them to the known signature of the defendant. Streeter was unable to verify that the signature...belonged to defendant. Streeter...could not eliminate the defendant as being the author...."

Earlier it was stated: "The court noted that the signature on the statement was not similar to the signature found on the motions that the defendant had filed in court. The court then ruled...any discrepancies...pertained to the weight of the evidence rather than to its admissibility."

COMMENTARY: This comment has nothing to do with this case but is only occasioned by it. I offer this solely as something to take into account as a standard background check before retaining a document examiner for a criminal defendant.

It is reasonable to assume a document examiner retired after 20 or more years as a prosecutorial expert retains at least residual loyalty to the prosecutorial profession. Maybe enquire whether the examiner ever exonerated a defendant while working as a prosecutorial expert. It might be a pipe dream that separating prosecutorial experts from law enforcement agencies will magically eliminate all bias in favor of prosecutors. After all, the same financial resource still butters one's bread on the correct side, whether major income comes from a paycheck or a retirement check.

This consideration might be more compelling if the examiner is currently employed by law enforcement. If your retained defense expert is employed by the same agency with jurisdiction to investigate the case, would there be an ethical conflict? In one case a document examiner with the California Department of Justice (DOJ) in Sacramento took a job in his private business in a civil complaint against the alleged forger. The same documents were submitted to DOJ in a criminal complaint against the same defendant as in the civil case. The same examiner was assigned the criminal case by the head of DOJ and promptly performed the same examination on DOJ time. Asked at the criminal trial about the ethics of this arrangement and duplication of work by the same expert for a private client then for the State, he said it was quite ethical. I guess he figured this was all ethical since the supervisor of the DOJ lab had made the assignment. He himself was the lab supervisor. Far be it from any of us to question the ethics of public employees taking business on the side which overlaps with duties to the tax paying public. However, I find it as distasteful as public regulators retiring with a public pension and going to work for those whom they allegedly regulated, assisting them on beating public efforts to regulate them. Were any hired because of a pleasing manner in formerly regulating the new employer?

2005

775. *State v Mulero*, 91 Conn. App. 509, 881 A.2d 1039, 2005 Conn. App. LEXIS 411 (Conn. App. 2005)

A handwriting expert testified that defendant wrote script on three DMV applications and rated the certitude at nine on a scale of one-to-ten.

COMMENTARY: Such numerical statements of probability are outside the generally accepted standard for expressing expert opinions in document examination, nor do they have any verified mathematical basis.

2011

776. *State v Mack*, 19 A. 3d 689 (Ct. App. CT. 2011)

Mack was convicted of killing one man, Booth, and wounding two others. One alleged error on appeal was that Greg Kettering, the state's expert handwriting witness, testified that two letters found in another prisoner's cell were identified as written by Mack. Objection was that they contained statements and expressions that unduly prejudiced Defendant. The letters asked the other prisoner to testify for Mack and gave instructions on the testimony with correct descriptions what Mack and the murder victim were wearing.

COMMENTARY: The jury could have made the reasonable inferences needed to convict, so presumably they did. Some day some prisoner will realize that the odds of writing incriminating messages in prison are that the prison officials will get hold of them.

2016

777. *Goodwin v Colchester Probate Court, et al.*, (AC 36214) (App. Ct. CT 2016)

In a probate that began in Pennsylvania and ended in Connecticut, a will with anomalies was accepted by courts in both states, beginning in Pennsylvania where Decedent ended life and ending in Connecticut where relatives and the major property were located.

COMMENTARY: The decision in this probate matter was far more one of legal issues than physical facts. It even seems as if the physical facts did not matter, since each apparently inexplicable anomaly had its satisfactory explanation. Do read the case report for yourself, since I am sure I missed something somewhere.

3. Connecticut Supreme Court.

2016

778. *State v Jamison*, (SC 19409) (CT 2016)

Jamison was ordered by the court to provide handwriting exemplars that were used

for the charge of making and possessing explosives, of which he was acquitted while being convicted of drug charges. “At trial, the state's handwriting expert, James Streeter, testified that the handwriting in the letter matched that in the notebook. He also testified that, on the basis of the significant ‘variations in the letter construction,’ it was his expert opinion that ‘the person [who] authored [the exemplar] was in all probability attempting to disguise his writing.’”

Upon appeal his conviction on drug charges was reversed on basis that the Connecticut constitution forbids compelled handwriting exemplars. The Supreme Court of Connecticut reversed in part on basis that the compelling of exemplars was harmless even if it had been an error since he was acquitted of the explosives charges to which the trial judge had instructed the jury the compelled handwriting exemplar was solely related. The jury could only consider that its having been disguised was an indication of a consciousness of guilt. A jury is presumed to have followed the judge’s instructions.

COMMENTARY: This is the first case report in this collection which I recall at the moment that clearly, fully and reasonably explained why an error was considered to be harmless.

I. DELAWARE CASES.

1. Delaware Trial Courts.

1999

779. *State v Tillmon*, 1999 Del. Super. LEXIS 42 (Superior Court, New Castle)

A handwriting expert testified that, on the first visit to obtain exemplars, Tillmon refused and on the second was uncooperative. No comparison was made.

COMMENTARY: Such behavior can be argued to show consciousness of guilt.

2002

780. *Reagan v Randell, et al.*, 2002 Del. Ch. LEXIS 84 (Court of Chancery, New Castle 2002)

COMMENTARY: Plaintiff presented testimony of a handwriting expert that her signature on a shareholder’s agreement was forged. Defendant represented he had an expert to testify otherwise but never presented the expert.

2003

781. *State v Jones*, 2003 Del. Super. LEXIS 240 (Superior Ct DE New Castle 2003)

Before the *in limine* hearing, defendant withdrew challenge to fingerprint expert

testimony but pressed that against handwriting. The State limited its proffer to having Georgia Ann Carter testify only as to her observations of similarities and differences. After a thorough review of the case law, the Court stated in footnote 27: “Despite the fact that the State no longer intends to offer Ms. Carter’s ultimate opinion that Defendant authored the note in question, there is substantial post-Kumho authority that supports the admissibility of such evidence in the appropriate case.” Earlier a trial judge of the same court had ruled handwriting expertise admissible as a technical skill that was both relevant and reliable.

COMMENTARY: The case report is recommended as an excellent review of the arguments against handwriting expertise and of the response of the courts. The report notes that Ms. Carter was also properly admitted in *U.S. v Edwards*, 816 F. Supp. 272, 1993 U.S. Dist. LEXIS 3091 (D DE 1993), which was discussed previously herein.

2006

782. *Williams v Peck*, Connecticut Statewide Grievance Committee, Grievance Complaint #05-1129. Determination made May 3, 2006.

COMMENTARY: An attorney was found in violation of professional rules of conduct, one being he committed forgery of letter from client and provided it as false evidence in hearing in Superior Court, New Haven. Ana Kyle testified at hearing for Peck, Respondent, and James C. Streeter and Greg Kettering for Disciplinary Counsel.

2007

783. *Swinford v World Aviation Systems, Inc.*, 2007 Del. Ch. LEXIS 129 (Court of Chancery, Kent)

“The key to WASINC’s contention that Swinford did, in fact, sign the Employment Agreement is the testimony of Gerald B. Richards (‘Richards’), an experienced forensic document inspector and analyzer of handwriting. His testimony, totally credible and based on years of experience, was also unequivocal: he was of the opinion, at the highest [*6] degree of confidence one can have as a handwriting expert, that no one other than Swinford could have signed the Employment Agreement. n9 He explained his analysis....” There then follows part of Richards’ testimony.

COMMENTARY: Footnote 9 reads: “Richards worked as a document examiner for the Federal Bureau of Investigation for two decades. (Tr. 208-11). He clearly satisfies any standard required for an expert in this area.”

2. Delaware Supreme Court.

The Supreme Court is the State's appellate court which receives direct appeals from the Court of Chancery, the Superior Court, and the Family Court.

2007

784. *Patterson v State*, 925 A.2d 504, 2007 Del. LEXIS 187 (Del. 2007)

COMMENTARY: The State presented the testimony of Georgia Carter, a handwriting expert.

2012

785. *In re the Estate of Norris E. Hammond. Hammond and Jones v Satterfield*, Civil Action No. 5611-VCG. (Court of Chancery of Delaware, 2012)

“In order to prove that the 2009 Will was a forgery, at trial, the Petitioners presented the testimony of an expert, Mr. R. David Wilkinson. Wilkinson testified that the signature purporting to be Hammond’s on the 2009 Will was, in fact, in the handwriting of another. Wilkinson reached this conclusion by comparing the signature on the 2009 Will to that of known exemplars of Hammond. The signature on the 2009 Will appears, to the lay eye, consistent with the exemplars. Wilkinson, however, noted technical differences between the two and opined that whoever signed the 2009 Will attempted to copy a known signature of Hammond.”

Later the court says: “The Petitioners, of course, could have called the notary and witnesses to the 2009 Will. There is no suggestion that any of those individuals are unavailable, and failure to call them represents a tactical decision on the part of the Petitioners. As the record stands, however, I am left with the sworn statements of the witnesses, juxtaposed against the opinion of the handwriting expert. Based on these circumstances, I cannot find by clear and convincing evidence that the signature is not that of Hammond.”

COMMENTARY: I am sure every expert witness of fairly extensive experience has had cases where clients economized in some way, considering evidence sufficient without the additional that the expert suggests. Though I cannot know whether such was the situation here, the case report suggests the petitioners might have been victims of their own economizing on preparation for trial.

2013

786. *Hurst v State*, No. 297, 2012. (DE 2013)

“(14) The State had been, throughout the trial, attempting to locate Lindsay Taylor, the female seen entering the house with Hurst the day of the search. The Superior Court had issued a *capias* for Taylor. Unable to find her, the State rested its case without calling her to the stand. That same day, the defense was scheduled to call its first witness, handwriting expert Rodney B. Hegman. Because Hegman was delayed at another trial in Wilmington, two hours away, the court recessed until the next morning. When the trial resumed, the State moved to reopen its case as Taylor had been found. Defense counsel objected to the

State's motion to reopen. During his argument on the objection, Defense Counsel referred to an off-the-record conversation he had with the Deputy Attorney General."

The two attorneys had different recall of the critical part of the conversation as to whether the Deputy Attorney General had given his word not to reopen his case in chief to call Taylor rather than only calling her as rebuttal if defense gave an opening. The trial judge ruled in favor of the State.

COMMENTARY: Although it is not specifically stated that Hegman testified, I assume defense counsel would have continued with his planned defense. In any case, defendant's conviction was upheld.

"*Capias*" is a writ for seizing or arresting. It is Latin for "you may seize" or the imperative to do so. The Latin word is the root for our "capture," literally a seizing of someone or something in the future.

2014

787. *State v Cooke*; relief from prejudicial joinder denied, and upon motions *in limine* to exclude certain evidence, 909 A.2d 596, 2006 Del. Super LEXIS 464 (Super. Ct. DE New Castle 2007); motion to transfer denied, 910 A.2d 279, 2006 Del. Super LEXIS 421; motions *in limine* granted in part and denied in part, 914 A.2d 1078, 2007 Del. Super. LEXIS 10; reversed and remanded for new trial, *Cooke v State*, 977 A. 2d 803 (DE 2009); second conviction and death penalty affirmed, *Cooke v State*, 97 A. 3d 513 (DE 2014)

Defendant challenged ten types of expert testimony. DNA would not be introduced by the State; video enhancement would be subject to a later *Daubert* hearing; voice identification was inadmissible as was fabric impression; five others were admissible; and the proposed handwriting comparison was admissible in part and inadmissible in part. The crux of the handwriting ruling was the nature of requested exemplars taken from defendant by Georgia Carter of the Delaware Police State Crime Lab. Those exemplars which in any way exhibited spelling and grammatical characteristics of defendant's writing were inadmissible.

The report provides extensive discussion of the constitutional issue whether soliciting a defendant's habit of spelling or use of grammar constituted self-incrimination. The court accepted the reasoning of those courts which said that, whereas handwriting itself was automatic and thus non-testimonial or minimally so, the spelling and grammatical errors in writing required some degree of mental deliberation, and so they were testimonial, the writer in effect stating: "This is how I spell and use grammar." Thus, to put the writer in a position to exhibit these traits was unconstitutional.

COMMENTARY: However much one disagrees with rulings such as this one, and I disagree on more than one ground, it seems to be the dominant legal ruling in this modern era. In the past, spelling and grammar were routinely used as part of the evidence for handwriting identification. I recommend this case report for three very important reasons. First, handwriting experts might have to modify their way of taking requested handwriting

exemplars in criminal cases so as not to run afoul of the legal restriction in *State v Poole* if it has been adopted in their state or Federal Circuit. Second, this case report surveys the legal reasoning behind the alternative rulings on the issue. Third, the case report cites most of the modern cases that have addressed the issue.

977 A. 2d 803:

This is placed after the commentary for what went before since the reversal of conviction and remand for a new trial seems to be in an unrelated but similar case, which unfortunately it is not. Not being a trial attorney nor any other kind of attorney, it seems to me that Cooke did his level best to be convicted and given the death penalty, which level best the jury obliged. The handwriting evidence by Carter is mentioned but not given a part in any issue of this case report.

97 A. 3d 513:

The evidence by Carter is reduced to a mention of writing at the investigation stage. The affirming of the second conviction seems to me to be what was plainly there but rejected in the reversal and remand decision of 977 A. 2d 803. The quote from page 518 sums it up nicely: “The Constitution protects citizens from having our government deprive them of their constitutional rights, but it does not protect a citizen where his own obstreperous conduct impairs his interests.” The murder is described in more gory detail, and the wondrous logic of 977 A. 2d 803 is rejected at length with far more footnotes which, I guess, makes this a very scholarly opinion.

I-2. DISTRICT OF COLUMBIA.

Cases for the District of Columbia are included among Federal Cases, its trial court being among Federal District Courts and its Court of Appeals among Federal Courts of Appeal.

J. FLORIDA CASES.

1. Florida Trial Courts.

2013

788. *Gaskell v Day*, Case No. 2012-SC-157 C, Final Judgment (Co. Ct. Clay County FL 2013)

There is extensive discussion of findings of fact in the various actions by the two parties and what the landlord/tenant agreement was. Of interest to us is the last paragraph of findings of fact:

“M. Both parties presented experts as to this issue. Plaintiff’s expert was credible and testified in his opinion that the initials of the Plaintiff and Defendant at the bottom of page 1 and page 2 of Plaintiff’s Exhibit 14 are not similar but the exact same initials; that

initial of the Plaintiff at the bottom of page 1 of Plaintiff's Exhibit 1 and Plaintiff's Exhibit 14 are not the same; and finally that initials of the Plaintiff at the bottom of page 2 of Exhibit 1 are the exact same initials at the bottom of page 1 and page 2 of Plaintiff's Exhibit 14. Thus, 'the Defendant faked' the initials of page 1 on Plaintiff's Exhibit 14 by copying the Plaintiff's page 2 initials onto page 1. Therefore, Plaintiff's Exhibit 14 which contains the paragraph charging additional rent was added after the Plaintiff originally initialed this page.

"N. The Defendant's expert [Baggett] was not credible."

COMMENTARY: Richard Orsini was Plaintiff's expert, and Curt Baggett was Defendant's. Defendant, the landlady, was ordered to make full reimbursement plus interest to Plaintiff, the tenant.

789. *Gonzalez, et al, v Best Meridian International Insurance Company*, Case No.05 - 25189-CA-40, Order on Plaintiff's *Frye* (and alternative *Daubert*) Motion Regarding Defense Expert, Raymond Orta Martinez (Cir. Ct., 11th Judicial Circuit, Miami-Dade County, FL, 2013)

"ORDERED and ADJUDGED that this Court, applying Fla. Stat. 90.7021 finds that the witness' testimony has not met the necessary requirements and his testimony would not be admissible in this case on the subject handwriting analysis."

COMMENTARY: My source told me that, among other difficulties, Defense Expert found forgery in a set of questioned signatures without having compared them to known genuine signatures.

2016

790. *Wells Fargo Bank, N.A., v Rohe and Rohe*, Case No. 2013-CA-1346-K (16th Judicial Cir. Monroe County, FL 2016)

Document Examiner Richard Orsini's testimony for Defendants was fully credited by the Judge in a bench trial. A rubber stamp signature was found not to be that of the purported signatory.

COMMENTARY: The bank had been a bit cavalier about discovery and other obligations. The moral to the story is that, when dealing with large, powerful entities, hold their feet to every fire possible for as long as possible.

2. Florida Courts of Appeal.

1994

791. *McCoy v State*, 639 So. 2d 163 (FL Ct. App. 1 Dist. 1994)

COMMENTARY: Handwriting expert testimony was received. Reversed and remanded on other grounds.

1998

792. *Brown v International Paper Company. et al.*, 710 So.2d 666 (FL App. 2 Dist. 1998)

The company fired Brown for stealing a computer. A handwriting analyst, Nicholas Burczyk, issued a report identifying him as the one signing for its delivery. The report and a letter from FedEx stating he had signed for the delivery were introduced at the hearing before the Unemployment Appeals Commission. The court of appeals reversed because hearsay evidence alone was insufficient to prove the forgery and so deny benefits.

COMMENTARY: This case did not involve testimony in a court of law, but I include it as a cautionary tale. I have had clients going to hearings on similar issues of employment, but they firmly insisted my report alone would satisfy their needs of evidence. Not being an attorney, I could not gainsay the assertions. Nevertheless, do be sure of the rules you labor under in non-court hearings. I would assume attorneys litigating in such areas are specialists since the rules of evidence and of procedures could be quite specialized. Be sure paper only will do the trick for you minus the live creator of the paper.

793. *Cox v Burke*, 706 So. 2d 43 (FL Ct. App. 5 Dist. 1998)

COMMENTARY: Handwriting expert testimony received.

1999

794. *Larman v State*, 724 So. 2d 1230, 1999 Fla. App. LEXIS 90, 24 Fla. L. Weekly D 154 (Fla. App. 1999)

COMMENTARY: In a felony murder case a handwriting expert testified Larman forged the victim's check after the murder.

2001

795. *Acosta v State*, 798 So. 2d 809, 2001 Fla. App. LEXIS 15024, 26 Fla. L. Weekly D 2543 (Fla. App. 2001)

"The basis of the charges in this case were that appellant and two other people forged and cashed a check. One of the others involved, Riley, admitted her complicity, and testified for the state. After the state's handwriting expert testified, defense counsel asked the expert whether he knew what happened to any handwriting samples taken from witness Riley. The expert answered that the only samples submitted to [*2] him were of appellant's handwriting.

"Following that testimony, the state recalled the detective and asked him why handwriting samples had not been taken from Riley. Appellant objected, but the court overruled the objection. The detective answered: 'Up until that point, everything Sarah Riley told me appeared to be truthful.' Appellant then moved for a mistrial, but the trial court denied the motion, instead instructing the jury to disregard the comment.

“It is clearly error for one witness to testify as to the credibility of another witness. *Boatwright v. State*, 452 So. 2d 666, 668 (Fla. 4th DCA 1984) (‘It is an invasion of the jury’s exclusive province for one witness to offer his personal view on the credibility of a fellow witness.’). It is especially harmful where the vouching witness is a police officer because of the great weight afforded an officer’s testimony. *Page v. State*, 733 So. 2d 1079 (Fla. 4th DCA 1999)”

COMMENTARY: Not counting the dissent, I quote about half of this very short opinion because of the issue of bolstering another witness’ testimony by testifying to that witness’ credibility or truthfulness. It is also against the rules to bolster one’s own expert testimony by stating how others reviewed one’s work and came to the same opinion, these others being unnamed and/or unavailable for cross-examination. Both violations, especially the second, are mostly practiced with impunity. Some law enforcement experts shame their fellows in the service by routinely describing how supervisors and peers, unnamed and unavailable of course, reviewed their work and endorsed it. Associations should consider such violations of the legal rules as serious, unethical conduct meriting correction by, or dismissal from, the association.

2002

796. *Deakter, as Successor Trustee of the Mendelson Living Trust, v Menendez*, 830 So.2d 124 (Ct. App. FL 3 Dist. 2002)

The concurring opinion states at page 131: “The defendant has introduced an entirely meaningless defense in the form of document examiner testimony. The defendant takes the position that he cannot be held liable unless the original note is produced for examination by his expert document examiner, so the document examiner can offer an opinion about whether the defendant signed the note. Since the original is lost, the defendant claims he is entitled to have the case dismissed. And in the meantime the defendant has produced expert document examiner testimony (based on examination of the xerox copy) to suggest that the defendant’s signature on the 1995 note may be a forgery.”

COMMENTARY: This is a case of a growing routine excuse: Unless the opposing party produces the original document, their case cannot be proven and mine must be accepted on my word. Unfortunately, some document examiners, who tout their limitations as the limitations of all others, have created the myth that only original documents can give definite, or even barely reliable, evidence. Some even refuse to work a case without original documents. Thus the party who destroys or sequesters original documents is rewarded.

2006

797. *Sanchez v Mondy and Mondy*, 936 So. 2d 35, 2006 Fla. App. LEXIS 11964, 31 Fla. L. Weekly D 1922 (Fla. App. 2006); rehearing denied, 2006 Fla. App. LEXIS 15701 (Fla. 2006); appeal after remand, *Mondy v Sanchez*, 972 So. 2d 1032, 2008 Fla. App. LEXIS 463, 33 Fla. L. Weekly D 238 (Fla. App. 2008)

Sanchez v Mondy, 2006 Fla. App. LEXIS 11964:

The finding by the trial court in favor of Mondy was reversed and remanded because the judge should not have relied on the testimony of the handwriting expert. A litany of errors in the testimony is given, which includes:

1. The exemplars for Mrs. Mondy were not before the court;
2. The documents had not been authenticated by any legitimate manner;
3. The purported signatures were not shown to be by Mrs. Mondy;
4. When the expert was shown a listing agreement with a known signature, she said she could not perform an in-court comparison;
5. The expert had been disclosed after the cut-off date for discovery;
6. The motion *in limine* to exclude the expert was not heard till the day of the testimony so preparation for cross-examination was precluded;
7. The expert had only six photocopies for exemplars; and
8. The listing agreement had not been shown to her, but it had all the traits she said proved the forgery, including misspelling of the first name.

All this made the expert's opinion speculative and her testimony trial by ambush. The ruling in Mondy's favor was reversed and the case remanded for decision without consideration of the handwriting expert's testimony.

Mondy v Sanchez, 2008 Fla. App. LEXIS 463:

On remand the trial court determined that without the handwriting expert's testimony, testimony of Mondy's witnesses was "incredible" and that Sanchez had proven specific performance under the contract at issue. This decision was affirmed. Since the handwriting issue was fully considered and decided in the earlier opinion, this case is placed chronologically as 2006.

COMMENTARY: Regarding the *Sanchez v Mondy* decision, except for the discovery cut-off date, the eight points listed are all items an expert would want to bring to the attention of the client/attorney as soon as trial testimony is mentioned. The expert should be thankful her name was not given in the decision.

Regarding the last item enumerated as 8, this is a very common misconception. The so-called "*indicia* of forgery," are simply that, indications, clues, but not proof, much less evidence of forgery. They become positive evidence of forgery only when it is demonstrated that they are absent from the purported writer's exemplars. In themselves they do indicate it is most prudent to investigate the matter.

Regarding the *Mondy v Sanchez* decision, it is a delight to read the word "incredible" being used in its proper meaning, "not able to be believed." Whenever the

word is used in the media it means more believable than believable and more wonderful than wonderful. It is incredible how often the word is used, how rarely it is used correctly, and how infectious its misuse can be. On reconsideration, make that last sentence to read: “It is an unfortunate fact how....”

2007

798. *Turovets v Khromov*, 943 So. 2d 246, 2006 Fla. App. LEXIS 18584, 31 Fla. L. Weekly D 2783; rehearing denied, 2007 Fla. App. LEXIS 102 (Fla. App. 2007)

“During discovery, Linda Hart, a handwriting expert, testified that based on the absence of variations n1 between Khromov’s signature and the potential forgery, a probability existed that someone forged Khromov’s signature. The expert further opined that although there was not a ‘high probability’ of forgery, the opportunity to examine the original deed might provide a more definite conclusion. Leonid refuted the alleged forgery, maintaining that he saw Khromov sign the deed. Alex Katz, who is not a party to these proceedings, corroborated Leonid’s testimony, [*3] stating he too observed Khromov and Shalom Silverman, the notary, sign the deed. The notary, who was also deposed, stated he was between sixty and seventy percent positive someone forged his signature because although portions of the purported signature were ‘exactly like’ his signature, his first name was misspelled and a few letters were written differently.”

Footnote 1 reads: “Hart explained that ‘[t]here are always variations’ to a person’s signature as no one signs their name the same way every time. Thus, the absence of variations would indicate that the signature was traced.”

COMMENTARY: The footnote is interesting and presumably left out some of the explanation. Complete absence of variations would indicate a cut-and-paste product, while a tracing would have some variation from its model, the human hand not being a perfect reproduction machine. I suspect all handwriting experts have had the experience of explaining a technical point in detail to an attorney or court only to have it repeated simplistically.

2008

799. *Telfort v State*, 978 So.2d 225 (Fla. 4th DCA 2008)

It was harmful error when the handwriting expert bolstered his testimony by stating another, non-testifying expert, agreed with his opinion. Besides Florida cases, cases are cited from Illinois, Iowa and federal Second Circuit to the same effect. See also the 2012 Florida Court of Appeals case of *Miller v State*.

Further, under Florida case law, promising not to file drug charges in return for a confession made the confession involuntary. That in turn made the bolstering into a harmful error, because, at page 227, without the confession “the state would be hard pressed to make the error seem harmless.”

COMMENTARY: I would like to see these rules against bolstering one's own expert opinion and against extorting confessions from defendants be adopted by all states and the federal judiciary. I had a case where the father of a new born child, whom his wife was nursing, confessed to writing order forms for magazines and other products to be sent to wife's first husband. Both the handwriting and delivery practices of the Post Office proved the first husband sent them to himself, he even produced original evidence of his doing so.

A police officer told the husband and father his wife would be arrested immediately if he did not confess. In his fear he both forgot to consult his attorney and confessed in order to keep his wife out of jail. The officer deceived the man in saying there was evidence to support the wife's arrest. Which brings me to another rule I would like to see adopted by all states and the federal judiciary. It is a crime for a citizen to lie to an officer of the law and thus obstruct justice, but an officer of the law may be deceptive with abandon, whether outright or by insinuation, such as, "Suppose I told you we found your spouse's fingerprints on the murder weapon...."

2010

800. *Puglisi v State*, 56 So. 3d 787 (FL Ct. App. 4th Dist. 2010)

COMMENTARY: Testimony from handwriting expert received.

2012

801. *Miller v State*, No. 4D09-3447. (FL App. 2012)

Defendant, a minor at the time of the crimes charged, was convicted of robbery, murder and other violent crimes. He was given four consecutive life sentences without possibility of parole. Conviction and sentence were reversed and the case remanded for a new trial

Two document examiners were given writing found at the scene of the crime along with samples from 12 people, modest amounts for 11 of them and 75 pages for defendant. At trial both examiners testified that part of their procedure was peer review of their work with the peer reviewer agreeing with their opinion. Defendant entered an objection of bolstering for both examiners in giving this testimony, but the trial judge overruled both objections. Florida cases are cited that make such bolstering by expert witnesses error. In this case the handwriting testimony was essential to tie defendant to the scene of the crime, so the error was not harmless.

The opinion summarizes the matter: "The State argues that no improper bolstering occurred because the experts 'were simply providing a general explanation of the [peer review] process.' While that may be true, it does not eliminate the harm of admitting the opinions of non-testifying experts to bolster the testimony of those testifying. Instead, it deprives the opposing party of the opportunity to cross-examine the non-testifying experts."

The report then goes on to give replies to arguments by the State why the impermissible should be permitted in this case.

COMMENTARY: If you are an expert in Florida, especially one who works for the criminal defense, read this case and take note of the case citations on the issue of bolstering. I have testified in cases where opposing document examiners, always with government service background, testified that unavailable, and even unnamed, experts agreed with all they were saying, and there was nary an objection to this self-bolstering. The corruption of peer review of underlying method and theory into a cooperative of concurring buddies in a big lab, or even in a small coffee-klatch-like group, is injecting the poison of bolstering into forensic testimony to the eventual status where it might preempt honest, independent work followed by honest, independent testimony.

It is refreshing to see such a clear condemnation of a very common but illegitimate practice. It might be a worthwhile project to survey all appeal and supreme courts, both state and federal, for similar rulings against such underhanded methods of prosecution. From a homey style argument, one might say such experts, along with those who testify as a mutual admiration society, are ganging up on a victim who is more than hampered in defending himself. Such tactics are only needed when there is either insufficient evidence against the guilty or no evidence against the innocent.

802. *Proctor v State*, 97 So.3d 313 (FL App. 5th Dist. 2012)

Detective Garrett Lane identified defendant as writer of bad checks, but he qualified neither as an expert or lay witness to defendant's handwriting. Conviction reversed and remanded.

COMMENTARY: This case is included lest someone cite it as ruling that a handwriting expert was inadmissible.

2016

803. *Daniels v State*, No. 4D14-3837 (Ct. App. FL 4 Dist. 2016)

COMMENTARY: Testimony of document examiner received that handwritten entries were made with two different pens.

804. *Sanabria and Piro v Pennymac Mortgage Investment Trust Holdings I, LLC.*, Case No. 2D15-866 (Ct. App. FL 2 Dist. 2016)

"Although we are precluded from reaching the merits of their arguments concerning Pennymac Trust's standing, we nevertheless reverse the final judgment of foreclosure because the circuit court erroneously found that the homeowners had failed to sufficiently plead a properly raised affirmative defense challenging the authenticity of Ms. Sanabria's signature on a promissory note." Thus, it was reversible error not to let document examiner, Ms. Jean J. Berrie-Perrino, testify.

COMMENTARY: This is another reminder that there are far more ways to keep a

handwriting expert from testifying than just arguing irrelevancy, unreliability or lack of helpfulness. One might particularly wish not to argue previously vain arguments and try something specific to the witness or issue involved and that has solid factual and legal support. As often as a try at rationality seems to lack appeal to judges and justices, I dare suggest it has better chance to prevail than irrationality, provided it be presented rationally and intelligently. I hope this not be a too daring and off-the-wall proposal.

3. Florida Supreme Court.

1994

805. *Eaddy v State*, 638 So. 2d 22 (FL 1994)

COMMENTARY: Handwriting expert testimony is received.

2001

806. *Ferguson v State*, 789 So. 2d 306 (FL 2001)

“Dr. Peritz Scheinberg, an expert in neurology, testified that Ferguson did not suffer from any neurological abnormality.

“In addition to this expert testimony, the State produced the testimony of five corrections officers who had opportunities to observe and interact with Ferguson. The officers all testified to observations of behavior which appeared inconsistent with *314 the delusions Ferguson was allegedly suffering from. Further, the officers indicated that Ferguson would only act irrationally, i.e., consistent with the findings of paranoid schizophrenia, shortly before and after mental evaluations.

“Finally, David Clark, an institutional counselor at the Florida State Prison, and Frank Norwich, a document examiner from the Metro Dade Police Department, testified that Ferguson was the likely author of several letters directed to the trial court. Drs. Haber and Miller opined that the level of thought and organization exhibited in the letters in question were inconsistent with Ferguson’s portrayal of his condition.”

COMMENTARY: I quote the larger context of Norwich’s testimony to illustrate how at times a handwriting expert is but one small cog in the machinery of proof at trial. In a hearing for post-conviction relief, Ferguson attempted to prove mental incompetence. He was largely competent at behaving mentally incompetent but with a tad too much incompetence to succeed.

2002

807. *Gorby v State*, 630 So. 2d 544 (FL 1993); denying motion for post conviction relief and for writ of *habeas corpus*, 819 So. 2d 664, 2002 Fla. LEXIS 636, 27 Fla. L. Weekly S 315 (Fla. 2002)

“Two witnesses testified that they saw Gorby with the murder victim on May 6. The next day the victim’s neighbor saw a note on the door of his house trailer. The note, saying he would return on Tuesday, aroused her suspicions, and, on entering the trailer, she found the victim dead of head injuries. A handwriting expert testified that Gorby, not the victim, wrote the note, and Gorby’s fingerprint was [*3] found on a jar in the victim’s kitchen. Receipts tracked the victim’s credit cards through Louisiana and Texas.”

COMMENTARY: I read a news report that half of the several hundred annual murders for a major city were not solved. Murder may well be more than one person’s routine manner of doing business, which is not to be wondered at since it is now unconstitutional to teach children anything that resembles religious morals, and maybe even simple, basically moral morals. Our Supreme Court only leaves danger of getting caught or murdered in return as the only inner motivation to act morally

2003

808. *Spann v State*, 772 S2 38 (FL 2001); 857 S2 845, 28 FL L Weekly S 784, 2003 FL LEXIS 465 (FL 2003); rehearing denied, 2003 Fla. LEXIS 1731 (FL 2003); post-conviction relief denied, 91 So. 3d 812 (FL 2012)

The report at 772 S2 38 only speaks of issue of double jeopardy. In the report at 857 S2 845, the court summary in part states: “(1) *Frye* standard did not apply to forensic handwriting identification evidence....” Defendant wrote a note telling another person how he should testify. He denied writing it, but then admitted doing so when handwriting experts were hired and he was ordered to give samples. The State wanted its expert to testify that the samples had been intentionally disguised. A *Frye* hearing was held on admissibility of expert testimony as to determining disguise in handwriting. “The trial court found that the proffered testimony would ‘assist the jury in determining the fact in issue,’ that the proffered testimony ‘is indeed based on scientific principle, which has gained acceptance in the field of Forensic Document Examination,’ and that the ‘witness is qualified....’” However, the expert was ordered not to render an opinion of intentional disguise, only providing the various possible explanations for the traits in the handwriting. On appeal, defendant shifted focus from admissibility of testimony as to disguise to reliability of the entire field of handwriting expertise. That objection was not preserved at trial, but, if it had been, forensic handwriting identification is admissible in Florida which follows *Frye*.

COMMENTARY: There has been a great deal of primary research published on the indicia of deliberate disguise in handwriting and how to discern it, and there are a number of reported court cases confirming the admissibility of such testimony. It is delightful to see a law review article, written to prove handwriting expertise inadmissible, quoted in support of admissibility. Jennifer L. Mnookin wrote a paper as argument for the inadmissibility of handwriting expertise. “Scripting expertise: The history of handwriting identification evidence and the judicial construction of reliability.” 87 *Virginia Law Review*, 1723-1845

(December 2001). The Court quotes it in support of admissibility, as did the court in *Valente v Wallace, et al.*, 332 F.3d 30, 2003 U.S. App. LEXIS 11803, 61 Fed R Evid Serv (Callaghan) 993 (1 Cir 2003), which was discussed herein previously.

I wonder if anyone has congratulated Professor Mnookin on having been quoted by the Supreme Court of Florida.

2004

809. *Globe v State*, 877 So.2d 663 (FL 2004)

COMMENTARY: Document examiner, Karen Smith, testified to defendant's having written certain words.

810. *Rodgers v State*, 2004 Fla. LEXIS 2120, 29 Fla. L. Weekly S 724 (Fla. 2004)

COMMENTARY: Donald Pribbenow, a Florida Department of Law Enforcement crime lab analyst, testified as a handwriting expert.

2005

811. *Brown v State; Brown v Crosby*, 894 So. 2d 137, 2004 Fla. LEXIS 2173, 29 Fla. L. Weekly S 764; rehearing denied, 2005 Fla. LEXIS 114 (Fla. 2005)

It was not ineffective assistance for defense counsel not to challenge handwriting exemplars or to cross-examine the state's handwriting expert since the testimony agreed with what defendant said and so enhanced his truthfulness.

COMMENTARY: One wonders why the prosecution presented the handwriting expert's testimony since it had the defendant's admission. Oh well, it is only taxpayer money.

2008

812. *Deparvine v State*, 995 So. 2d 351, 2008 Fla. LEXIS 1686, 33 Fla. L. Weekly S 784 (Fla. 2008)

"A notarized bill of sale from Rick to Deparvine, dated November 25, 2003, [*7] was also discovered indicating a purchase price of \$ 6,500. Susan A. Kienker, who notarized this bill of sale, later testified that Rick, whom she knew personally, asked her to notarize the bill of sale on November 25, 2003, and handwriting expert Don Quinn confirmed Rick's handwriting on the bill of sale as authentic."

COMMENTARY: Don Quinn, retired from the Florida Department of Law Enforcement.

2014

813. *Dausch v State*, 141 So. 3d 513 (FL 2014)

COMMENTARY: Testimony from a handwriting expert is received.

2016

814. *State v Dougan*, No. SC13-1826 (FL 2016)

COMMENTARY: An FBI handwriting expert testified that Dougan wrote the note found by a murder victim's body.

K. GEORGIA CASES.

1. Georgia Trial Courts.

I have no case reports for Georgia trial courts.

2. Georgia Court of Appeal.

1995

815. *Eason Publications, Inc. v Nationsbank of Georgia, et al.*, 458 S.E.2d 899, 217 Ga. App. 726 (Ct. App. GA 1995)

Eason's controller embezzled close to \$1,000,000.00 over a four-year period. A document expert testified that the forgeries were easy to detect. However, summary judgment for the bank was upheld since Eason did not take ordinary care in inspecting its bank statements.

COMMENTARY: There were other legal issues regarding relative obligations of the two parties which one might find interesting for the back and forth debate the Court of Appeals carries on with itself.

816. *Holland v Farmer*, 458 S.E.2d 175, 217 Ga. App. 546 (Ct. App. GA 1995)

At page 177: "There is evidence in this case, however, supporting the trial court's implicit conclusion that appellant Holland did not '[proceed] in good faith.' This includes evidence that although she maintained that a certain handwriting expert opined that a signature on a deed was not Mr. Hamby's signature, that handwriting expert testified at trial that he had not formed or given such an opinion."

COMMENTARY: The classical self-help book assures us of the power of positive thinking, but that thinking be in harmony with reality is the root source of its greatest power.

1996

817. *Hale v State*, 214 Ga. App. 899 (Ct. App. GA 1994); affirmed, 469 S.E.2d 871, 220 Ga. App. 667 (Ct. App. GA 1996)

Hale's "conviction of three counts of forgery in the first degree based on unauthorized use of the credit card" is affirmed. At trial, handwriting expert Anthony said signatures on the charge slips exhibited Hale's significant features. He said the signatures did not match the victim's signatures.

While the search warrant had not specifically listed samples of Hale's writing, its seizure "is not improper. *Banks v. State*, 262 Ga. 190, 192(4), 415 S.E.2d 634 (1992). There can be no question that handwriting of the suspected perpetrator is potential evidence concerning forgery." Though a letter to his wife was used, "Here, the contents of the letter written by Hale to his wife were not used in any way against him and only the characteristics of the handwriting contained in the letter were used by the handwriting expert for comparison purposes. Such use did not violate Hale's rights. *Lowe v. State*, 203 Ga. App. 277, 279-280(1), 416 S.E.2d 750 (1992)."

COMMENTARY: Regarding the last statement, a defense attorney might try dipping into one theory from character graphology, namely, that content of a writing might be of such emotional impact that the writing style could alter in some way. Thus, handwritten correspondence of one genre could be inappropriate for comparison to that of a different genre. I would put the odds very heavily in favor of rejection of this argument, but a little residual persuasion might work in a special case or portraying such as a "brutal invasion" of marital privacy might cause it to offend a jury's sense of fair play. As stated elsewhere herein, a desperate situation calls for desperate measures, but only so far as they create no new desperation.

1998

818. *McClure v State*, 506 S.E.2d 667, 234 Ga. App. 304 (Ct. App. GA 1998)

COMMENTARY: Testimony of a handwriting expert is received.

2002

819. *Cooper v State*, 253 Ga. App. 242, 558 S.E.2d 786, 2002 Ga. App. LEXIS 18, 2002 Fulton County D. Rep. 189 (Ga. App. 2002)

Cooper was convicted of raping his daughter-in-law and moved for a new trial on basis of newly discovered evidence in form of a letter from the victim recanting her complaint. Cooper's handwriting expert testified the victim wrote the letter while the state's expert testified she had not, and the victim denied having written it. The Court of Appeals affirmed denial of the motion for new trial, noting that the author of the letter misspelled the victim's name when signing it.

COMMENTARY: The trial judge was finder of fact on the motion and his giving credibility to one witness rather than another would not be disturbed unless clearly erroneous.

820. *Lively, et al., v Southern Heritage Insurance Company*, 256 Ga. App. 195, 568 S.E.2d 98, 2002 Ga. App. LEXIS 868, 2002 Fulton County D. Rep. 2036 (Ga. App. 2002)

COMMENTARY: Lively's handwriting expert testified that Lively did not sign one document but probably signed a second.

821. *Willett v Stookey*, 568 S.E.2d 520, 256 Ga. App. 403 (Ct. App. GA 2002)

It is explained at page 526 why three witnesses were not permitted to be called: "The proffered testimony presented a risk of confusing the issues. First, the evidence that Stookey fabricated the Cotton States letter is circumstantial. Second, two of the witnesses are arguably biased; witness Richardson is the plaintiff in the unrelated litigation, while witness Carpenter left Stookey's employment because she was unhappy. Third, in order to understand the testimony of witness Shiver, a forensic document examiner, the jury would have to be educated about law office procedure in handling insurance matters such as the Cotton States letter, as well as numerous technical concepts related to document production and transmission. In short, it would have been necessary to have a mini-trial on this one point."

COMMENTARY: This is another reminder that there are more ways to have an expert witness struck than asserting inadmissibility or unreliability.

2003

822. *Ferguson v State*, 584 SE 2d 618, 262 Ga. App. 28 (GA Ct. App. 2003)

At page 620: "The chief forensic document examiner at the State Crime Lab, Arthur T. Anthony, testified as an expert. Anthony, a board-certified document examiner, conducted testing on a lined notepad found in the vehicle that Ferguson was using. By studying indentations that appeared on a blank sheet of paper from the notepad, Anthony was able to discern 'the wording of "I" then the words "have a gun," "cash."'"

COMMENTARY: I think it was in the novel *The Man with the Golden Gun*, that James Bond writes notes on a pad of paper. He removes several sheets so no one could later decipher his notes from indentations. If criminals read more, they might learn basic precautions to take in their professional activities. A good education helps success in any career.

2004

823. *Poole v State*, 270 Ga. App. 432, 606 S.E.2d 878, 2004 Ga. App. LEXIS 1468, 2004 Fulton County D. Rep. 3707 (GA App. 2004)

The Georgia constitution provides that a defendant may not be compelled to provide handwriting exemplars. However, any voluntary writings by a defendant may be used. In this case the court found that the exemplars written for the police were voluntary.

Poole also challenged the admissibility of the handwriting expert who is not named. “To qualify as an expert, generally all that is required is that a person be knowledgeable in a particular matter; his special knowledge may be derived from experience as well as study, and formal education in the subject is not a requisite for expert status.”

Defendant claimed the expert was not qualified because she failed a test to join American Board of Forensic Document Examiners and was only a trainee member of American Society of Forensic Document Examiners. However, she belonged to Southwestern Association of Forensic Document Examiners, had worked eight years for the Georgia Crime Lab, and had testified in court about 18 times. There was no abuse of discretion in permitting her to testify.

COMMENTARY: This case should be a salutary lesson to those who claim for themselves the very highest qualifications because of their associations as opposed to their inherent qualities. Logically, they are confessing that they themselves were knowingly and willfully working as unqualified experts until they amassed the documentation they now claim provides the only “recognized” qualifications, that is, they themselves only recognize their own qualifications and no one else’s, even their own prior to their achieving their present august status.

From an Internet search, American Society of Forensic Document Examiners appears to be either an alternate name for, or a part of, American Society of Questioned Document Examiners.

2005

824. *Quay v Heritage Financial, Inc.*, 274 Ga. App. 358, 617 S.E.2d 618, 2005 Ga. App. LEXIS 754, 2005 Fulton County D. Rep. 2237 (Ga. App. 2005)

“Where a jury returns a verdict and it has the approval of the trial judge, the same must be affirmed on appeal if there is any evidence to support it as the jurors are the sole and exclusive judges of the weight and credit given the evidence. The appellate [*12] court must construe the evidence with every inference and presumption in favor of upholding the verdict, and after judgment, the evidence must be construed to uphold the verdict even where the evidence is in conflict. As long as there is some evidence to support the verdict, the denial of defendant’s motion for new trial will not be disturbed. Myer testified that he did not sign the New Account Application. Heritage’s handwriting expert opined that ‘Robert Myer did not prepare the question signatures on [the New Account Application]

but that they were prepared by James Quay,’ and Quay’s handwriting expert acknowledged that Myer’s signature had been forged. Both experts presented their findings and opinions to the jury, including demonstrative exhibits comparing the two signatures. In light of this testimony, we do not find that the jury’s verdict was against the weight of the evidence.”

COMMENTARY: I quote the passage at length as a reminder that it is easier to win at trial than on appeal. Reading this for the fourth edition, I will change the end of this sentence to read: “...that it is less difficult to win at trial than on appeal.”

2009

825. *Burke v State*, 676 S.E.2d 766, 2009 Ga. App. LEXIS 362, 2009 Fulton County D. Rep. 1276 (GA Ct. App. 2009)

COMMENTARY: The State called a forensics documents examiner from the Georgia Bureau of Investigation.

2010

826. *Woods v State*, 696 SE 2d 411 (GA Ct. App. 2010)

COMMENTARY: Testimony of a handwriting expert was received.

2013

827. *Crawford, et al., v Crump*, 476 S.E.2d 855, 223 Ga. App. 119 (GA App. 1996)

“Plaintiff also introduced the testimony of Arthur T. Anthony, an expert in the field of ‘forensic document examination.’ Mr. Anthony concluded that ‘Doris Barfield prepared the date directly above her name[, ... but that] the evidence indicated that Doris Barfield did not prepare the date in the upper right ... of Plaintiff's Exhibit Number 1.’ Mr. Anthony confirmed that his ‘examination [would not purport to] reveal when the date was written on that document.’”

COMMENTARY: See the commentary for *Dufhilo v D'Aquin*, 615 So. 2d 522 (LA Ct. App. 3 Cir. 1993), for an explanation of absolute and relative dating of documents.

3. Georgia Supreme Court.

1994

828. *McIlwain v State*, 264 Ga. 382 (GA 1994)

COMMENTARY: The testimony of a handwriting expert was received.

2003

829. *Reece v Smith*, 276 Ga. 404, 577 S.E.2d 583, 2003 Ga. LEXIS 165 (Ga. 2003)

COMMENTARY: A handwriting expert testified that a signature had been forged.

2004

830. *Brown v Brown, et al.*, 277 Ga. 594, 592 S.E.2d 854, 2004 Ga. LEXIS 138, 2004 Fulton County D. Rep. 594 (Ga. 2004)

COMMENTARY: In a contest of the will of one Bobbie Brown, a handwriting expert testified that the purported signature of decedent on the will was forged.

2009

831. *Bell v State*, 284 Ga. 790, 671 S.E.2d 815, 2009 Ga. LEXIS 23, 2009 Fulton County D. Rep. 163 (GA 2009)

COMMENTARY: Testimony from a handwriting expert was received.

832. *Phillips v State*, 675 S.E.2d 1, 285 Ga. 213, 2009 Ga. LEXIS 44, 2009 Fulton County D. Rep. 431 (Ga. 2009)

“Appellant asserts counsel was ineffective because he failed to seek a continuance when, three days before trial, he received from the State the letters purportedly written by appellant to the co-indictee. Appellant testified at trial that he was not the author of the letters in question. Appellant maintains trial counsel should have obtained a handwriting expert to establish that appellant did not write the letters. Trial counsel testified that appellant never denied before trial having written the letters and counsel did not believe the trial judge would grant [*22] a continuance mid-trial. Even were we to assume deficient performance in counsel’s failure to seek a continuance, in light of the testimony of appellant’s handwriting expert at the hearing on the motion for new trial that he could not state with certainty that appellant did not write the letters, such assumed deficient performance created little actual prejudice to be considered in our assessment in Division 5(k), *infra*, of the collective prejudice stemming from all of trial counsel’s errors.”

COMMENTARY: Unfortunately, “could not state with certainty” does not tell us whether the expert needed to be definite or at a lesser level of assurance.

2012

833. *Wheeler v State*, 725 S.E.2d 580, 290 Ga. 817 (GA 2012)

“4. Wheeler claims that the trial court erred in admitting into evidence a letter purportedly written by Johnson in which she stated that Wheeler had threatened her life and that Wheeler should be investigated if ever she were found dead. Specifically, Wheeler

contends that the letter could not be properly admitted into evidence because the handwriting expert who authenticated the letter could not show that a proper chain of custody had been established with respect to the document. Wheeler is incorrect. Because the letter constituted non-fungible physical evidence that could be recognized by observation, there was no need for the State to prove chain of custody with respect to it. *Mize v. State*, 269 Ga. 646, 651(5), 501 S.E.2d 219 (1998) ('There is no need to prove chain of custody for non-fungible physical evidence identified by a witness, since these items can be recognized by observation.') (citations omitted)."

COMMENTARY: "Fungible" means part or all of a substance can be replaced by a like amount and/or kind of the same substance. For example, tap water is fungible. If someone wants to fill a pitcher to take to the table but spills some of it on the way, other tap water can be added to the pitcher; one need not rescue what was spilled. However, documents are preferably given chain of custody to protect them from alterations, deletions or additions once they become evidential. If something untoward does occur to them, the chain of custody will help determine when, where and by whom.

2014

834. *Perera v State; Alma v State*, S14A1109, S14A1110 (GA 2014)

Emily Margaret Perera and Miguel Angel Alma were convicted of murdering Robert Scott Burdette and setting his car on fire with his body inside it. A GBI forensic handwriting expert opined that both Perera and Alma created the handwritten map used to plot the crime.

Part of the evidence included cell phone towers at the scene of the crime that Perera's cell phone "pinged" off of while she claimed she was in another part of town. Additionally, Perera had dated Burdette and was known on the internet dating site as "Sexy Sophie."

COMMENTARY: This is an object lesson for men to value more than just sexiness in the gals they date.

L. HAWAII CASES.

1. Hawaii Trial Courts.

I have no case reports for Hawaii trial courts.

2. Hawaii Intermediate Court of Appeals.

1996

835. *Romero v Hariri, et al.*, 911 P.2d 85, 80 Hawai'i 450 (Inter. Ct. App. HI 1996)

Hariri tried to purchase apartments by use of an option. With the help of a private investigator and a handwriting expert, Romero discovered Hariri was also Parenti whose real estate broker's license had been long since cancelled. Hariri's way of doing business ended with judgment in favor of Romero: "[T]he trial court awarded her \$25,412.33 in special damages, \$20,000 in general damages, and \$1,000,000 in punitive damages.[1] Romero *89 was also awarded \$16,385.37 in prejudgment interest and \$9,033.50 for costs."

COMMENTARY: Hariri could comfort himself with thought Romero did not get attorney's fees since, if I understood correctly, it seems in Hawaii punitive damages cover them.

2004

836. *State v Meyer*, 2004 Haw. App. LEXIS 267 (Haw. App. 2004)

COMMENTARY: In a forged check case, handwriting expert Lloyd James Josey, Jr., testified that the owner of the account did not make out the check in question.

2005

837. *State v Kekahuna*, 2005 Haw. App. LEXIS 245 (Haw. App. 2005)

At page [*8]: "A handwriting expert testified that Kekahuna's failure to provide a compatible writing sample prevented her from determining whether Kekahuna wrote the front of the check."

COMMENTARY: Presumably the expert was taking or asking for requested exemplars and the defendant did not cooperate. However, if we handwriting experts truly know handwriting, we do not need what is usually called comparable samples, such as exact same letters, letter-combinations, words or phrases to compare, and that only in precisely the same style. What use would anyone have of an expert in any endeavor if the expert could only perform in the most ideal circumstances? Anyone can have a better than fair stab at it in such circumstances.

2008

838. *Lee and Brelow-Scott v Unciano, et al.*, 2008 Haw. App. LEXIS 338 (Interm. Ct. App. HI 2008)

On page 1: "(1) The circuit court did not abuse its discretion in denying Unciano's

oral motion to strike Hayes's testimony, and FOFs B22, C2, and C4 through C6 are not clearly erroneous. The circuit court had the discretion to determine whether Hayes was credible and how much weight to give his testimony, and we 'will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence.'

Kaho`ohanohano v. Dept of Human Serv., State of Hawai`i, 117 Hawai`i 262, 301, 178 P.3d 538, 577 (2008) (internal quotation marks and citations omitted)."

COMMENTARY: Defendant made a motion to strike Hayes' testimony. There was no abuse of discretion in denying the motion. Hayes is a certified member of NADE and has served in various offices, including journal editor.

2014

839. *Certain Underwriters at Lloyd's London Subscribing to Policy No. LL001HI0300520, v Vreeken, et al.; and Vreeken v Wengler, et al.*, No. 30156 (Intermediate Court of Appeals of Hawaii 2014)

"(9) Bishop Defendants contend that the Circuit Court erred in admitting evidence that the signature on the Second Application was forged. Specifically, they argue that certified handwriting and document examiner Reed Hayes's expert testimony that the signature on the Second Application was not Steven's was either irrelevant or had probative value which was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. They further argue that the Vreeken's contention that Wengler was the forger was without any basis."

COMMENTARY: The arguments against Hayes' testimony were all rejected, while contending Wengler was the forger was based on reasonable inferences from other evidence.

Hayes is certified by NADE and has served on its Board of Directors.

3. Hawaii Supreme Court.

2000

840. *State v Webster*, 94 Haw. 241, 11 P.3d 466, 2000 Haw. LEXIS 351 (Haw. 2000)

The parties stipulated to a handwriting expert's testimony that defendant had written certain notes.

COMMENTARY: I consider such a stipulation as the equivalent to testimony by the expert.

2001

841. *Beneficial v Kida, et al., and related cases*, 30 P.3d 895 (HI 2001)

At page 910: "In rebuttal, Beneficial Hawaii offered the testimony of Howard C.

Rile as an expert witness in the area of forensic document examination. Rile testified that, of nineteen signatures appearing on Kida's loan documents, eighteen were not in Kida's handwriting and that the only signature actually written by Kida was that appearing on the promissory note. He also opined, based on his analysis of the paper comprising the three-page note, that the first two pages of the note were composed of a different type of paper than that bearing the signature."

COMMENTARY: From the decision, we can infer that Rile's opinions were credited

2009

842. *Weinberg v Dickson-Weinberg*, 220 P. 3d 264 (HI Interm. Ct. App. 2009)

At page 269: "Attached to Husband's memorandum was a report by Reed Hayes (Hayes), a handwriting-and-document examiner, in which Hayes opined that the AITD was not signed by Husband. Hayes also reported that he was unable to conclusively identify or eliminate Wife as the author of Husband's signature on the AITD.

"On October 24 and 28, 2005, the parties litigated the issues surrounding the AITD. Husband and Wife, as well as one handwriting expert for each, testified. At a November 2, 2005 hearing, the family court orally denied Wife's motion to enforce the AITD."

AITD is short for "an agreement incident to divorce."

COMMENTARY: Husband won on the unenforceability of the AITD and scant else, the remand granting most of what Wife sought.

L2. IDAHO CASES.

1. Idaho Trial Courts.

I have no trial court cases for Idaho.

2. Idaho Court of Appeal.

I have no appeal court cases for Idaho.

3. Idaho Supreme Court.

843. *Suits v Idaho Board of Professional Discipline, Idaho State Board of Medicine*, 138 Idaho 397, 64 P.3d 323, 2003 Ida. LEXIS 21 (ID 2003)

A doctor's license is revoked and he may not reapply for five years. A handwriting expert testified before the Board that a prescription was written for one person but given to another.

COMMENTARY: Though this does not involve court testimony, I included it in the appendix of the previous edition since there was no Idaho case in the text itself. My hopes

to find one or more court cases for Idaho still wait for fulfillment.

M. ILLINOIS CASES.

1. *Illinois Trial Courts.*

I have no case reports for Illinois trial courts.

2. *Illinois Courts of Appeal.*

1993

844. *People v Eichwedel*, 617 N.E.2d 345, 247 Ill. App.3d 393, 187 Ill.Dec. 137 (App. Ct. IL 1 Dist. 1993)

COMMENTARY: Testimony of a handwriting expert was received.

845. *People v Libman*, 618 N.E.2d 1129, 249 Ill. App.3d 451, 188 Ill.Dec. 559 (App. Ct. IL 1 Dist. 1993)

COMMENTARY: Testimony by a handwriting expert was received.

846. *People v Wilson*, 626 N.E. 2d 1282, 254 Ill. App.3d 1020, 193 Ill.Dec. 731 (IL App. Ct. 1 Dist. 1993)

Eyeglasses were found at the scene of a murder. At page 1290: “The State introduced an invoice from Mueller Optical Company, signed by a ‘Joseph Wilson.’ Maureen Owens, a document examiner, testified that the signature on the invoice was in the defendant’s handwriting.” Defendant had used the name Joseph Wilson on previous occasions.

COMMENTARY: Her name is also given elsewhere as Maureen A. Casey-Owens. My *QDE Index* lists several journal papers by her, and they are worth the reading.

1994

847. *People v Caldwell*, 631 N.E. 2d 353, 259 Ill. App.3d 646, 197 Ill.Dec. 350 (IL App. Ct. 2 Dist. 1994)

At page 354: “John Gorajczyk, a document examiner from the Du Page County Crime Laboratory, testified that he compared the handwriting from the endorsement on the check with defendant’s handwriting exemplars. In Gorajczyk’s opinion, there was a high probability that defendant wrote Robert Turner’s name. Gorajczyk could not make a positive identification. Gorajczyk also believed that the person who wrote ‘Robert Turner’ on the back of the check also wrote ‘pay to the order of Jennifer Ocampo’ on the back of the check.”

COMMENTARY:

848. *Miller v Miller*, 643 N.E.2d 288, 268 Ill. App.3d 132, 205 Ill.Dec. 337 (App. Ct. IL 4 Dist. 1994)

In a divorce case proceedings were initiated to collect arrears in child support from the husband. At pages 289-290: “In July 1986, plaintiff filed a petition to show cause in the dissolution court alleging receipt of only \$20 in support payments from defendant and requesting entry of judgment for the sums due and owing pursuant to the 1977 judgment of dissolution, together with current attorney fees. Notice of the hearing on the petition was sent by certified mail to defendant at his place of employment, Fuhs Auto Sales, in Gallup, New Mexico. The receipt was signed by Loren Fuhs, manager, who stated in an affidavit that it was his procedure to deliver certified mail to employees, that defendant was an employee at that time, and that he believed defendant had received the letter in accordance with the procedure. Defendant did not appear at the hearing on the petition held August 7, 1986, and the dissolution court entered judgment of \$32,530, representing support arrearage and attorney fees provided for under the judgment of dissolution, and \$250 in attorney fees incurred in bringing the petition to show cause. An order of withholding was mailed to defendant in care of Fuhs Auto Sales but it was returned with the handwritten message ‘return to sender, moved left no forwarding address.’ At a later hearing, a handwriting expert submitted an affidavit and report concluding the handwriting on the envelope was that of defendant.”

COMMENTARY: One cannot but admire the man’s chutzpah while delighting that he would surely get his comeuppance.

1995

849. *Resolution Trust Corporation, v Hardisty, Jr., et al.*, 646 N.E.2d 628, 269 Ill.App.3d 613, 207 Ill.Dec. 62 (App. Ct. IL 3 Dist. 1995)

COMMENTARY: Testimony by a handwriting expert was received.

1996

850. *Magee v Huppin-Fleck and Fleck*, 664 N.E.2d 246, 279 Ill. App.3d 81, 215 Ill.Dec. 849 (App. Ct. IL 1996)

COMMENTARY: Testimony of a handwriting expert was received.

851. *People v Accardi and Accardi*, 671 N.E. 2d 373, 284 Ill. App.3d 31, 219 Ill.Dec. 459 (IL App. Ct. 2 Dist. 1996)

Defendants’ conviction for possession of cannabis was reversed and remanded. They denied having signed a consent to search form. Law enforcement agents involved all denied having forged the forms and some testified to seeing defendants sign the form.

At page 374: “Jean Brundage, a document examiner for the Illinois State Police, testified that Greg Accardi’s signature on the consent to search form was a forgery. The testimony of Steven Kane, an expert retained by the defense, was admitted by stipulation. Kane also concluded that Accardi’s signature on the form was forged.”

COMMENTARY: It kind of helps your case when you have the opposing expert on your side.

1997

852. *People v Sargeant*, 685 N.E.2d 956, 292 Ill. App.3d 508. 226 Ill.Dec. 501 (IL App 1997)

Defendant successfully moved *in limine* to have proposed testimony of handwriting expert, James L. Hayes, ruled inadmissible at trial. The appeal decision explains the legal balance between excluding evidence and the right of the government to prove its case. The balance came down soundly in support of the trial court’s ruling: “While an expert witness may testify in terms of ‘could have’ or ‘might have’ [citation omitted] his opinion should not be admitted if it is inconclusive or speculative [citations omitted]. In this case the handwriting expert’s opinion was based on a photocopy of a writing sample and was inconclusive, tentative, and speculative. We do not know what his opinion would be if the original writing were to be examined.”

COMMENTARY: I suspect Hayes could have given an opinion soundly based on facts. He is quoted as having written: “Based upon the examinations and comparisons conducted, I am of the opinion that the questioned signature cannot be identified as having been made by [Neenan]. Characteristics within the questioned signature, such as tremorous line quality and movement variations, indicate the signature may be an attempt at simulation. Should the original questioned exhibit become available, I will need to conduct a further analysis.”

Did he check the genuine signatures to see if they had these traits? If they do not, each becomes a significant difference which prevents a finding of genuineness and might well support at least a probable opinion of falsity. This decision might well be the fruit of the prevalent myth today that loss or destruction of originals thwarts the expert, and, if so, a myth with which even handwriting experts are being infected to an epidemic degree.

An *in limine* challenge was filed by the defense which apparently was denied. Hayes is a member of ASQDE and ABFDE.

1998

853. *In re Estate of Tomasa Alfaro; Koble, et al., v Alfaro, et al.*, 703 N.E.2d 620, 301 Ill. App.3d 500, 234 Ill.Dec. 759 (App. Ct. IL 2 Dist. 1998)

At page 624: “Fred Dudink testified as a document examiner and handwriting analyst. After examining the paper, the watermarks, and the typewriting font, he did not

find any alterations in the document. He concluded after comparisons with other exemplars that the signature of Alfaro compared favorably with the standards he used. He also concluded that the same person who wrote the initials 'LC' also wrote the name Lucy Copado. He would not testify, however, that the signature purporting to be that of Copado was actually that of Copado. On cross-examination, he stated he was prepared to testify that Copado's signature was a 'disguised writing.'

"The contestants' counsel examined Diane Marsh, a forensic document examiner. After studying Copado's writing habits and comparing Copado's signature standards with the signature on the will, Marsh concluded that the signature attributed to her did not compare favorably with the signature on the will. She opined that someone attempted to duplicate Copado's signature on the will."

COMMENTARY: When compared to other available terms for expressing an expert opinion, "compared favorably" would not, I offer, be much favored in the industry.

1999

854. *Los Amigos Supermarket, Inc. v Metropolitan Bank and Trust Company, et al.*, 306 Ill. App. 3d 115, 713 N.E.2d 686, 1999 Ill. App. LEXIS 416, 239 Ill. Dec. 155 (Ill. App. 1999)

At page [*10]: "The evidence deposition of Avina's handwriting expert, James Hayes, was presented during the trial. In Hayes' opinion, Avina did not sign either the Assignment or the \$ 2,300 lease. However, in Hayes' opinion, those two documents had been signed by the same person."

COMMENTARY: Some states have rules that permit use of an evidence deposition in lieu of a personal appearance by the witness. It is a tool to keep a personable and persuasive witness out of the jury's sight.

855. *People v Davis*, 710 N.E.2d 1251, 304 Ill. App.3d 427, 238 Ill.Dec. 149 (Ill. App. 2 Dist. 1999); post-conviction relief affirmed, 879 N.E.2d 996, 316 Ill.Dec. 608 (Ill. App. 2 Dist. 2007)

At page 1258: "The State's other witness was Stephen McKasson, a document examiner and training coordinator for the Illinois State Police. He has been employed in the area of forensic science for 25 years, 18 of those years with the Illinois State Police. For the first seven years, he worked for the United States Postal Inspection Service, where he performed thousands of fingerprint examinations each year. For the Illinois State Police, McKasson's speciality is document examination, an area in which he has testified as an expert over 125 times. McKasson previously compared lip prints in other cases."

It seems handwriting is his favored expertise. See other cases cited in this collection. 879 N.E.2d 996:

Davis was granted a new trial since lip print expertise was sole physical evidence tying him to the murder for which he was convicted. The case report describes the very detailed and wide ranging criticism Andre Moenssens offered why lip print identification

was not reliable. Additionally, defense attorney's performance at trial did not meet current standards.

COMMENTARY: McKasson offered no testimony as a document examiner in the post conviction relief hearing, for which reason this case is listed as 1999. Since that is his claimed major expertise, some attorney might find the facts of this case relevant to a new case. Read the case reports for the part other forensic witnesses played.

On a different note, lest one think one's own health problems are overwhelming, from the post conviction hearing at page 1002 here is a summary of those of defense counsel at the first trial: "Bastianoni testified by video-recorded deposition. He stated that, at the time of the deposition, he did not possess defendant's file because he had discarded it. Bastianoni is a sole practitioner who specializes in criminal defense and works out of his house. Bastianoni's wife acts as his secretary, but she also has a full-time job elsewhere. Bastianoni has Parkinson's Disease and is on the verge of retirement. He suffered a heart attack in 1983, had a pacemaker and three stints implanted, and had three angioplasties. Bastianoni takes 9 to 12 pills a day."

856. *People v Kalwa*, 306 Ill. App. 3d 601, 714 N.E.2d 1023, 1999 Ill. App. LEXIS 485, 239 Ill. Dec. 726 (Ill. App. 1999)

"Jeanne Brundage, a handwriting and printing examiner for the Illinois State Police Crime Lab, testified that she compared various items with known handwriting samples of Rachel and defendant. In Brundage's opinion, Rachel's check found in Downers Grove and made out to defendant for \$ 400 had a simulation of Rachel's handwriting for her endorsement, and defendant's actual signature as a second endorsement. The check made out to defendant for \$ 600 dated August 20, 1993, had a simulation of Rachel's signature, defendant's genuine signature and pictorial similarities to Rachel's [*7] known writing as to the other entries. The other checks testified to by Myer also contained simulations of Rachel's signature."

COMMENTARY: If such serial forgers knew when to stop pushing their luck, I wonder whether they would escape eventual detection? Psychological studies of habitual forgers agree on their intellectual arrogance even to the point of a snobbish attitude to other types of criminals. Their sense of superiority oozes out of biographer written of them and particularly permeates their autobiographies.

2000

857. *People v Jeffries*, 726 N.E.2d 626, 311 Ill. App.3d 1014, 244 Ill.Dec. 651 (IL App. 5 Dist. 2000)

At page 629: "Stephen McKasson, a recognized expert in the area of handwriting, testified for the State that the handwriting evidence indicated that Montrielt Boey, Lisa Boey, and Dana Johnson did not write their signatures on the voter registration cards. Stephen testified that after requesting a second handwriting exemplar from defendant, he

formed the opinion that defendant printed the information in the upper portion of the voter registration cards, including the name, address, date and place of birth, social security number, and telephone number for Montrielt Boey, Lisa Boey, and Dana Johnson.

“McKasson explained that ‘East St. Louis’ on line two of the address information was omitted on Dana Johnson's registration card and was printed by someone other than defendant on Lisa Boey's and Montrielt Boey's registration cards. The State asserted in argument that defendant inadvertently omitted ‘East St. Louis’ from line two of block one so that twice someone else had to write it in for her and the third time the information remained omitted. Stephen further testified, however, that based upon the known writings of defendant, the handwriting evidence did not indicate that defendant had written the signatures of Dana Johnson, Lisa Boey, or Montrielt Boey on the signature line of the voter registration cards.”

COMMENTARY: Did defense counsel fail to check the meaning of standard terminology where “indicated” would equate only to a reasonable suspicion, far from proof beyond a reasonable doubt? The argument about omission of “East St. Louis,” and the correction or non-correction of the omission, is pure speculation. But why let lack of sound forensic evidence hinder any conviction?

858. *People v Spiezer*, 316 IL App3 75, 249 IL Dec 192, 735N.E.2 1016, 2000 Ill. App. LEXIS 694 (2 Dist 2000)

Defense attorney did not have to disclose report of handwriting expert he consulted but did not call as trial witness. Contempt of court was reversed.

COMMENTARY: One can reasonably argue that the entire episode was based on everyone's belief that the expertise was reliable and the opinion credible evidence. The research and analysis on which the opinion is based ranges across case law from Federal courts and courts of other states. Of the possible bases for deciding the issue, the work product doctrine was taken to be ruling. The case report is an excellent example of a decision being thoroughly and conscientiously wrought. It certainly offers many starting points for a trial attorney faced with the same issues though needing either more recent citations or citations from one's own state's courts.

2002

859. *Bajwa v Metro. Life Ins. Co., et al.*, 776 NE 2d 609 (IL App. Ct. 1 Dist. 2002)

COMMENTARY: The opinion of a handwriting expert was received.

860. *In re Estate of Ann L. Cuneo; Mowinski v Stout, et al.*, 780N.E. 2d 325 (IL App. Ct. 2 Dist. 2002)

Darlene Hennessy, a questioned documents examiner, testified that, having compared three of decedent's known signatures from her will to those on deeds that were in

dispute, decedent's signatures on the deeds could not be identified, and this to a reasonable degree of certainty. Objections to this on appeal were rejected since the court could reasonably have relied on the opinion.

COMMENTARY: Every handwriting expert who reads this is wondering, "But why could decedent not be identified as the writer? Three exemplars are insufficient? Poorly copied materials? Hennessy faced a difficulty she could not resolve? She had been rushed or put into impossible circumstances for good work?" And other possibilities, while on the face of it, it seems that everyone took it to mean that decedent had not written the signatures. Thus, this may be a routine case of cross-examiner incompetence.

2003

861. *People v Soto*, reversing and remanding murder conviction, 2002 IL App LEXIS 1066 (IL Ap 2002); vacated, reversing and remanding murder conviction, 336 IL Ap3 238, 783 N.E.2d 82, 270 IL Dec 507, 2003 IL App LEXIS 44 (IL Ap 2003); order to vacate opinion and reconsider in light of *People v Ceja* [204 IL2 332, 273 IL Dec 796, 789 N.E.2d 1228 (IL 2003)] 204 IL2 679, 789N.E.2 301, 273 IL Dec 401 (IL 2003); vacated, substitute opinion, affirming murder conviction, 342 IL Ap3 1005, 796N.E.2 690, 2003 IL App LEXIS 1111, 277 IL Dec 604 (IL Ap 2003)

This discussion refers to 783 N.E.2d 82 on an issue not mentioned in opinion given at 796 N.E.2d 690. The latter ruled all errors were harmless since evidence of guilt was overwhelming and that the handprinting issue was a very minor issue at that.

Defendant refused to provide exemplars for comparison to handprinted documents and contended on appeal that admitting that refusal as consciousness of guilt was error. The basis for the contention was not constitutional, but that such comparison was "not generally accepted in the relevant scientific community." If the issue were to arise on retrial after the reversal and remand of murder conviction, a ruling on admissibility under *Frye* would have to be made before defendant could be ordered to make exemplars.

COMMENTARY: There seems to be an increase of inability among document examiners to compare handprinting, particularly comparing handprinting to so-called cursive handwriting. This fits with a decrease in knowledge about the physiology of handwriting and of the graphic motor sequence, along with an increase in comparison by formation, where only the same letters written in the same style can be compared. It may well be that those of us, who have scientific knowledge of handwriting and of its production, will eventually be on the short end of a general acceptance test. It is, I think, easier to be contentedly limited in knowledge and ability than not. However, the competent, studious and industrious examiner should still be able to pass muster under either *Frye* or *Daubert*.

862. *Estate of Genevieve Bontkowski, Disabled Person, et al., v Bontkowski, et al.*, 337 Ill. App. 3d 72, 785 N.E.2d 126, 2003 Ill. App. LEXIS 95, 271 Ill. Dec. 475 (Ill. App. 2003)

“In the present case, [Diane] Marsh, the Estate’s handwriting expert and a disinterested witness, testified that the signatures on the Mason deed were not Genevieve’s. Calcagno argues that the Estate failed to prove by clear and convincing evidence that the deed was forged because on cross-examination Marsh admitted that it was possible that the ‘G’ [*8] in the signatures could have been Genevieve’s. Marsh further stated, however, that it was not probable that the ‘G’ was Genevieve’s because it was different from her habit formation. [James L.] Hayes, Calcagno’s expert, did not contradict Marsh, stating that it was possible that the Mason signatures were forged. Lewandowski, the notary used to acknowledge Genevieve’s signatures on the deeds, offered nothing to validate the Mason signatures. She admitted that the deed was not signed in her presence, she had never met Genevieve, and she had no idea what her signature looked like.

“The circuit court’s finding that the signatures on the Mason deed were forged was not against the manifest weight of the evidence.”

COMMENTARY: Hayes had said that the signature on the Mason Deed could be proven neither authentic nor false. Presumably the case was one where reasonable experts could honestly disagree, but where Marsh gave more cogent reasons while other evidence better meshed with her opinion. In such cases it is no shame to either expert that the court should find one opinion more persuasive than the other. That is precisely the reason we have trials by impartial judges and jurors, a fact the anti-expert experts apparently misunderstand since they declare judgments in keeping with their opinions as being impeccably correct and any contrary as being ambiguous at best and inexcusably flawed at worst.

2004

863. *Dowd and Dowd, Ltd. v Gleason, et al.*, 816N.E. 2d 754, 352 Ill. App.3d 365, 287 Ill.Dec. 787 (IL App. Ct. 1st Dist. 2004)

James Hayes, a forensic document examiner, testified for Dowd that certain tax forms had been signed by certain individuals and had also been altered. The trial judge could not determine whether the forms had been filed, while other issues were not properly before the court.

COMMENTARY: It seems that Hayes had done a commendable job examining the documents, so it is a shame it ended up without relevance.

2005

864. *People v Sterling*, 828N.E. 2d 1264, 357 Ill. App.3d 235, 293 Ill.Dec. 766 (IL App. Ct. 1 Dist. 2005)

COMMENTARY: Jean Brundage, a questioned document examiner, testified for the

People.

2006

865. *Hoxha v LaSalle Nat. Bank, et al.*, 847N.E. 2d 725, 365 Ill. App.3d 80, 301 Ill.Dec. 715, (IL App. Ct. 1 Dist. 2006)

COMMENTARY: Testimony was received from Diana Marsh, a forensic document examiner.

2007

866. *Robillard v Berends, et al.*, 861 NE 2d 1152, 308 Ill.Dec. 587 (IL App. Ct. 1 Dist. 2007)

Document examiner Alan T. Robillard in Massachusetts prevailed in efforts to be paid by lawyers in Illinois. The appellate court upheld the circuit court's denial of defendants' motion to quash filing of a Massachusetts ruling whereby Robillard filed in an Illinois court to discover their assets.

COMMENTARY: I include this case to celebrate the triumph of one of our own and to encourage all of us to pursue payment by out-of-state welshers.

2008

867. *Anderson v Golf Mill Ford, Inc.*, 890 NE 2d 1023 (IL App. Ct. 2008)

COMMENTARY: The testimony of a handwriting expert was received.

2009

868. *Gambino, et al., v Boulevard Mortg. Corp., et al.*, 922N.E. 2d 380 (IL App. Ct. 1st Dist. 2009)

Diana Marsh testified as a document examiner for plaintiff Gambino. She determined that more than 39 purported signatures were not written by Gambino. At page 407: "The trial court also found the expert testimony of Marsh 'extremely credible, thoroughly articulated, and well-supported.' The trial court found that defendants offered no evidence to refute this testimony."

The judgment of the circuit court was affirmed in its entirety.

COMMENTARY: The description of Marsh's testimony indicates a very professional performance.

869. *Cunningham v Schaefflein*, 969 N.E.2d 861, 360 Ill. Dec. 816 (IL App. Ct. 1st Dist. 2012)

“¶¶ 12 The objectors presented Lisa Hanson, a certified forensic document examiner, as an expert witness. Hanson reviewed the petitions circulated by Leslie and Weed and opined that many of the signatures submitted by Weed and Leslie bore characteristics of common authorship. Among the 84 signatures Hanson identified during her testimony, she found several common authors.”

COMMENTARY: Due to more serious issues, Hanson’s evidence did not have to carry the day. Cunningham’s name was ordered not to appear on the ballot.

870. *Kruzek v Estate of Kruzek*, 2012 IL App (1st) 121239-U (IL App. 2012)

Plaintiff was entirely disinherited by his mother’s second will in favor of his brother. He offered Tamara Kaiden as an expert witness, for the unstated but apparent purpose of providing evidence the mother’s signature on the second will was false. The trial court ruled Kaiden to be unqualified to testify. There were two major concerns expressed by the trial court, that Kaiden never stated specific data about her training nor ever described any hands-on training.

“¶ 37 We disagree with Steven’s argument that the circuit court improperly diminished the value of Ms. Kaiden’s distance learning and her document reviews and improperly equated hands-on training with in-person training. The circuit court made clear it was not finding Ms. Kaiden unqualified as an expert in forensic document examination due to her distance learning and lack of in-person training, but rather that it was finding her unqualified as an expert due to the lack of evidence regarding the *details* of said learning and training. The court also made clear it was finding Ms. Kaiden unqualified to testify as an expert witness in forensic document examination because no evidence was presented as to the *contents* of the documents she allegedly had reviewed during the 200-plus handwriting cases for which she has consulted. As discussed above, the circuit court committed no clear abuse of discretion in so finding.” [Emphases in original.]

Steven’s motion for reconsideration was properly denied since everything he offered could have been presented prior to the decision to disqualify Kaiden. Additionally, the trial court credited the two witnesses to decedent’s signature on the second will. So even if Kaiden’s assumed evidence of forgery had been heard, it would have been rejected in favor of the credible eye-witness testimony.

COMMENTARY: Someone brought this case to my attention with expression of great concern for implications regarding Koppenhaver’s and Baier’s training of Kaiden. However, the appeal decision clearly states the value of that training is not discounted, only that there was lack of testimony by Kaiden as to its contents and nature, such as whether there was hands-on training. The entire difficulty regarding Kaiden might well be derived from the attorney’s inadequate questioning. Equally so, the attorney might have

experienced an unsatisfactory response pre-trial to enquiries in that regard. We must make our best assessment of case reports, but there remains so much we can only address by surmise and inference. It is imperative to recognize surmise and inference by either ourselves or any others for what they are.

871. *People v Richter*, 365 Ill. Dec. 158, 977 N.E.2d 1257 (IL App. 2012)

“¶ 144 On the day after Julie's death, the neighbor gave the sealed envelope that he had received from her to the police. It contained a handwritten letter that a document examiner concluded was written by Julie, addressed to ‘Pleasant Prairie Police Department, Ron Kosman or Detective Ratzenburg,’ and it bore Julie's signature. The letter conveyed in detail Julie's suspicions and concerns about her husband, explained that because of her children she would never commit suicide, and described how she did not drink and did not use much in the way of medication. Id. ¶ 7, 727 N.W.2d at 521-22.”

COMMENTARY: There were several other instances of the wife's telling others of her suspicions. Husband was convicted, and the conviction was affirmed.

Paragraphs 128 through 131 give a glowing tribute to Professor Michael H. Graham, whose *Graham's Handbook of Illinois Evidence* is quoted as a reliable authority on rules of evidence.

2013

872. *People v Oduwole*, 985 N.E.2d 316, 368 Ill. Dec. 743 (IL App. 4 Dist. 2013)

COMMENTARY: Document examiner Lindell Moore testified for The People.

873. *In re Estate of Dennis F. Radwanski; Radwanski and Radwanski v Radwanski*, 2013 IL App (2d) 120139-U (IL App. 2 Dist. 2013)

Two sons brought suit against mother, Sherry, nine years after father's death. Tam Kaiden testified that the father had not signed key documents (¶20). The sons lose something of their claim, and the mother decidedly more. As to Kaiden's testimony, the record notes (¶21): “The court found that the absence of decedent's signature on the books was a ‘red herring’ because the authentication page did not state that the decedent's signature was required to be effective. Also, the court stated that, to the extent the records needed to be certified, Sherry's signature as the corporation's secretary was sufficient.”

COMMENTARY: Kaiden is another product of the training provided by Bart Baggett, which at least at one time cost \$10,000.00.

2014

874. *People v Coleman*, No. 5-11-0274 (App. Ct. IL 5 Dist. 2014)

Among seven alleged errors at trial were these two: “(1) whether the trial court erred in allowing the State to present the testimony of an expert linguist on the issue of

authorship attribution [and] (4) whether the trial court erred in admitting the expert testimony of Lindell Moore in which he compared spraypainted writings found at the murder scene to defendant's handwriting.”

After a Frye hearing, the trial court permitted the linguist, Dr. Robert Leonard, to testify over defense objections. He first compared the questioned writing, both e-mails and graffiti, among themselves and found several similarities they shared, thus tying them to one writer:

First, they began with the word “fuck,” which was rare for such criminal writings since in the FBI database of 4400 examples only eight began with “fuck.”

Second, the documents contain conditional threats, one example being, “Stop today or else.”

Third, the documents describe the motivation for the death threats as defendant's job.

Fourth, the gratuitous insults in the writings were limited to the same words.

Fifth, the letters contained capitalization in closing.

The linguist then found four common traits in Defendant’s known writings which are not said to be found in the questioned. How many of the five from the questioned were found in the known by Coleman is not stated.

Defense filed an *in limine* motion to bar handwriting expert Lindell Moore from testifying. “The trial court granted the motion with regard to any reference by Moore to the report of Richard Johnson, another laboratory handwriting analyst at the State Police lab in Springfield. The motion's relevancy objection was taken under advisement and reserved until the time of Moore's trial testimony.” The latter was eventually denied.

Moore testified to his comparison of selected few letters between the spray-painted graffiti and Coleman’s regular pen-and-paper writing. He could not tell such things as to whether the spray-painting was done with the right or left hand.

COMMENTARY: When faced with an opposing linguistic or stylistic expert, check out every assertion given as basis for identification. One example from this case is that Leonard said Coleman fused the two words “any time” into one, “anytime.” Whether that is a unique trait depends on whether one means it as an adverb, “anytime,” or as a noun modified by an adjective, “any time.” For example:

“At what time do you want to go shopping?”

“Oh, we can go at any time since I can shop anytime.”

A linguistic expert should know at least a bit about proper idiom in the language being analyzed in order to know whether some usage is standard or not. The defense should have hammered away at the significant differences between the writings and the apparently less than seven similarities. Most of all, Leonard gave an opinion on authorship since he said all the questioned writings were by the same person, which is an unequivocal opinion as to authorship, particularly since comparison was made to no other person but Coleman. Once more the perception of the critics in the self-contradiction of this kind of ruling, allegedly limiting the expert’s testimony, only makes it more powerfully suggestive.

The effectiveness of Moore’s testimony was summed up thus by the justices of the

appellate court:

“¶ 147 Moore never identified defendant as the author of the writings on the wall; he pointed out similarities, which the jury was free to accept or reject based upon its own visual inspections of the photographs of the writings on the wall. Defense counsel did an admirable job of pointing out the unreliability of comparing spray-painted writings with handwritten writings, and defendant's own expert, Steven McKasson, who trained Moore, cast serious doubt on Moore's ability to compare defendant's handwriting samples with the spray-painted writings on the wall. Therefore, even if it was error to allow Moore to testify, any error in the admission of his testimony was harmless because Moore's testimony did little to advance the State's case.”

Both handwriting experts lacked knowledge of the publications related to examining graffiti, while Moore showed lack in basic methodology. The legal analysis left much to be desired as well, which probably should be credited to the attorneys on either side. Both Leonard and Moore should have been roundly impeached and a strong case made to disqualify them, at least in this particular case with its particular issues. Fortunately, the case report indicates the rest of the prosecution witnesses were far more competent and credible.

875. *People v Jaynes*, No. 5-12-0048 (IL App. 5 Dist. 2014)

Defendant's conviction for watching child pornography on his computer was affirmed. Detective Sergeant David Vucich was qualified as an expert in recovering files from a computer. However, he was also asked about handwritten e's on both a label in dispute and in defendant's handwriting, which he said were similar to each other. Defense counsel objected that Vucich was not a handwriting expert, his objection being overruled which was upheld on appeal.

COMMENTARY: Paragraph 53 explains why the expert's non-expert observation and the opinion expert's non-expert, non-opinion opinion were admissible: “The trial court did not abuse its discretion in allowing Detective Vucich's testimony that certain handwritten Es looked similar. His opinion was based on his personal observation, was one that a person is generally capable of making, and was helpful to a clear understanding of his other testimony. While he stated that certain handwritten Es looked similar, he did not say that all the Es looked the same, and he did not offer any conclusions about whether the Es were written by the defendant.”

I believe the follow-up objection should have been that, in the reasoning given by the Court, the witness was testifying as a lay witness to handwriting. In that case he needed to testify to his personal familiarity with the handwriting of Defendant. The prosecutor did not need this underhanded way to make mere opinion, however cleverly left implied, seem to the unsophisticated juror to be an expert opinion. It was only necessary to ask the jury to compare the e's on the label to Defendant's e's and draw whatever conclusion they felt was justified.

876. *Danigeles v Illinois Department of Financial and Professional Regulation*, No. 1-14-2622 (App. Ct. IL 1 Dist. 2015)

Danigeles appealed suspension of her dental license and imposition of a fine by an administrative law judge. One of her three witnesses was James Hayes, handwriting expert. The suspension and fine were upheld.

“¶ 44 Hayes testified that he obtained handwriting exemplars from Danigeles at her office on three different occasions: February 12, 15, and 18, 2013. He then examined photocopies of M.M., K.M., and C.M.'s dental records and compared them with Danigeles' handwriting exemplars. Hayes opined that it is unlikely the questioned entries in these treatment records were made by Danigeles. Hayes, however, did not prepare a formal report with his findings.

“¶ 45 On cross-examination, Hayes acknowledged that many factors may affect a person's handwriting such as age, fatigue, arthritis, caffeine intake, nicotine withdrawal, illness or injury, medications, stress, height at which the person writes, or wearing latex gloves. He further opined that photocopies alter the characteristics of a person's handwriting and he would have preferred to examine the original dental records instead of the photocopies he was provided. In addition, Hayes testified that it would have been beneficial to have an exemplar that was made contemporaneously with the dental records.”

His testimony was discounted since it was irrelevant to the central issue of Danigeles's responsibility for billings coming out of her office no matter who recorded the data.

COMMENTARY: Let us suppose the handwriting evidence were not irrelevant to the key legal issue. Let us also suppose the case report summarizes accurately the entirety of the evidence. Attorneys for both parties needed to attend to serious issues that could make or break Hayes's testimony.

First, Hayes had violated the *post litem motam* rule, and a motion to disallow the exemplars he took from his client should be granted, leaving him with no basis for an opinion. Second, on redirect the attorney proffering him should revisit all the things that could affect handwriting, asking what effects each has on handwriting, were such effects present, how does the handwriting examiner determine their presence, and what research supports this specific expertise. Left as it is stated, the answer can incorrectly be argued to show the witness failed to take account of these factors and/or they are present but opposing counsel avoided enquiring about them for that very reason. The same enquiry is required to defeat assumptions and false argument regarding photocopies. For this reason I have taken to include in my reports that I rely only on traits that cannot be credited to the copying process.

Unfortunately, your handwriting expert might not know how to determine influences from the factors listed, including effects of various reproduction processes. Thus, you might wisely ask about such things before signing the retainer check versus blindly hoping

opposing counsel and examiner are even more unaware of the potential pitfalls than your expert would be.

2016

877. *Vician and Vician v Vician and Vician*, 2016 IL App (2d) (IL App. Ct. 2 Dist. 2016)

Warren Spencer, document examiner, testified on behalf of defendant. Plaintiffs prevailed.

3. Illinois Supreme Court.

1997

878. *People v Woolley*, 687N.E. 2d 979, 178 Ill.2d 175, 227 Ill.Dec. 497 (IL 1997)

“Tomsha and the defendant both submitted handwriting samples. FBI document examiner John Sardone, a handwriting expert, testified that the defendant’s samples were written in a deliberate manner and did not contain his naturally occurring handwriting.

*985 Because of the deliberate nature of the defendant’s samples, Sardone could not positively identify the defendant as the author of the written statements turned over to the authorities by Tomsha. Sardone was able to conclude that all of these documents were written by the same person, and that they were not written by Tomsha. Sardone also concluded that the signatures on the documents matched the defendant’s signature in the known samples.”

COMMENTARY: The rule is that giving false handwriting exemplars can be taken as indicating consciousness of guilt. The defense attorney should consider several factors, among which are:

a) The individual might truly write that way, which is not uncommon due to various factors;

b) The individual might have been instructed to write in a false manner, such as change one’s slant to the left because the questioned writing was left-slanted;

c) The person ordered to write naturally might become so nervous about obeying orders that severe tension causes what is natural when severely tense versus normally relaxed; and

d) The text, pen, paper, table, chair or other circumstances are uncomfortable for the writer.

1998

879. *People v Kliner*, 705 N.E.2d 850, 185 Ill.2d 81, 235 Ill.Dec. 667 (IL 1998)

COMMENTARY: Maureen Casey-Owens identified defendant as the writer of two documents.

N. INDIANA CASES.

1. *Indiana Trial Courts.*

The sole trial court report I have is with the appeal court cases since there was the later appeal decision. See *infra*, *Gill v Gill*, 2013, *Indiana Courts of Appeal*.

2. *Indiana Courts of Appeal.*

1995

880. *Gardner v McClusky*, 647 N.E.2d 1 (Ct. App. 5 Dist. IN 1995)

Gardner claimed it was error to admit sample signatures that McClusky's expert used to testify she had not signed the note in question. However, the expert said the three most useful exemplars were from exhibits at trial introduced by Gardner. Thus, though the others were not properly authenticated, the most useful three were, presumably because by using the exhibits in his case Gardner thereby admitted the signatures were genuine. Thus the error in admitting the other exemplars was harmless.

COMMENTARY: I wonder what Gardner's attorney might have accomplished by establishing with McClusky's expert, first, did he use the other exemplars and, if so, what the usefulness of each was. Then a motion could be made to strike that portion of the expert's testimony. The ruling on appeal was that the error of admitting the other exemplars was harmless since the three most useful were properly admitted. Would one party use any piece of evidence it did not believe was useful to itself and harmful to the opponent?

2001

881. *Bedree v Bedree, et al.*, 747 N.E.2d 1192, 2001 Ind. App. LEXIS 889 (Ind. App. 2001)

COMMENTARY: A handwriting expert testified that signatures on deeds were forgeries.

2003

882. *Garcia v Garcia*, 789 N.E.2d 993, 2003 Ind. App. LEXIS 961 (Ind. App. 2003)

At page [*9]: "Here, the evidence regarding the validity of the receipt was conflicting. While Father's handwriting expert testified that in his opinion the signature on the receipt was Mother's, he could not testify to the authenticity of the receipt itself because it was a photocopy. Mother testified that she did not execute the receipt and that she did not have access to a computer or typewriter to provide the typewritten receipt to Father in 1996. Further, Mother's expert testified that the signature on the receipt was not Mother's."

COMMENTARY: Father's expert showed proper understanding of the rule in

examining photocopies: Whereas the unseen original cannot be authenticated by document examination, it can be proven false, even definitely so. Mother prevailed, and Father had to pay accumulated unpaid child support with interest.

2005

883. *Dickenson v State*, 835 N.E.2d 542, 2005 Ind. App. LEXIS 1928 (Ind. App. 2005)
COMMENTARY: A handwriting expert could not be sure which of two persons signed a letter, but favored one over the other.

2008

884. *Prime Mortgage USA, Inc., et al., v Nichols*, No. 49A04-0610-CV-586 (IN App. 2008)
Nichols was plaintiff at trial. “The Defendants further claimed that Nichols had authorized such a transaction pursuant to a Share Authorization Document (the ‘SA Document’), which they claimed Nichols had signed. On April 23, 2003, Nichols filed her amended complaint, adding a claim of breach of fiduciary duty and alleging that Law improperly induced Nichols to sign the SA Document. On April 7, 2005, the trial court granted Nichols permission to file her Third Amended Complaint, in which Nichols deleted the allegation that Law induced her to sign the SA Document and instead claimed that Law forged her signature on the SA Document. Nichols had discovered this forgery by comparing another corporate document, signed in 1993, in which she and Law had amended Prime’s Articles of Incorporation (the ‘Written Consent’). The signature blocks on the Written Consent and the SA Document were identical, leading Nichols to believe that Law had affixed the signature block from the Written Consent and electronically pasted it onto the SA Document. Clarke Mercer, a forensic document analyst, testified that there was ‘no doubt’ that the SA Document was a forgery.”

COMMENTARY: This procedure for creating a false document is called “cut-and-paste,” from the old days where one would use a pair of scissors and a paste pot, which provide the images for the computer icons one is to click to do the same thing electronically.

2010

885. *In re Matter of Compton; Compton, et al., v First National Bank of Monterey, et al.*, 919N.E. 2d 1181 (IN Ct. App. 2010)

At page 1184: “8. Sharon Rose Hampton testified that from her examination of the purported contracts, including the notarized addendum, the purported signatures of the decedent were in fact written by Scott W. Compton; however, Debbie L. Moriarity, a notary public, testified that she followed protocol and established that the person signing the addendum was identified by hospital records and a wrist band as the decedent, who

understood what he was doing.”

COMMENTARY: The Case Summary at pages 1182-1183 states that prior to this case Indiana had enacted a new law ending the common law of presumption of undue influence if three provisions were met:

- a) the principal acted voluntarily,
- b) the power of attorney was not used, and
- c) the attorney in fact benefitted.

In a case of first impression it was ruled by the trial judge that all three provisions had been met and thus one son’s otherwise inheritance was given over to another son and his wife. This was affirmed. Meanwhile, handwriting experts must still call them as the available physical evidence of handwriting best indicates, knowing so much else in the case is beyond their control or even their legitimate consideration.

Ms. Hampton has been a member of NADE and of SAFE.

2013

886. *Gill v Gill*, Cause No. 32D03-1012-CT-3 and 32D03-0905-DR-62, Decision (Hendricks County Superior Court, IN, Sept. 11, 2012); affirmed: No. 32A01-1209-DR-436 (IN Ct. App. 2013)

Originally this was given as a trial court decision, but then it went on appeal. Here is the original summary and commentary on the trial court decision:

Gill v Gill. Cause No. 32D03-1012-CT-3 and 32D03-0905-DR-62, Decision (Hendricks County Superior Court, IN, Sept. 11, 2012)

Issue was whether plaintiff husband had signed several documents in the underlying divorce that gave all community property to the wife. James Steffen was wife’s handwriting expert. The sole statement in the decision concerning expert evidence was paragraph 20: “Court finds that James Steffen was not a credible witness.”

COMMENTARY: In his deposition, Steffen stated he retired from the Secret Service but had not worked in their forensic services. He had taken the two-week survey course given to investigators so they would know what services the qualified document examiners could provide to them. Most document examiners claiming training by the Secret Service probably took this same course which the Secret Service has officially stated does not qualify one to act as a document examiner. So make an examiner claiming a training by the Secret Service to prove that it was a standard training course of two years or more versus a two-week survey course.

Appeal Court Decision:

The Court of Appeals fully upheld the trial court. The appeal court’s decision, unlike the trial court’s decision, notes the testimony by the husband’s handwriting expert: “Moreover, Husband’s handwriting expert, rebutting Wife’s expert, testified that there were ‘indications’ leading to ‘reasonable suspicion’ that Wife might have written the questioned

signatures. September 4, 2012 Transcript at 91. The instant case is a prime example of fraud on the court.”

COMMENTARY: The appeal decision gives information the trial court decision did not, such as stating Husband’s handwriting expert was Marcel Matley.

887. *Ryan v State*, No. 34A02-1211-CR-921 (IN App. 2013)

“Ryan told Kubica that Lewis filled out the check on Ryan's back. Courtney King was a forensic document examiner for the Indiana State Police Laboratory Division. She performed an analysis of the handwriting on the front and back of the check. The results of her analysis are as follows:

‘The writing on the front of the check in Item 900 contains heavy pen pressure, hesitation marks, pen lifts, poor line quality, blunt beginning and ending strokes, and lacks speed of execution. These features indicate unnatural writing which could be attributed to disguise, distortion, simulation, or some other unknown factor affecting the writer or writing process. In addition to the features listed above, the "Lonnie Lewis" signature on the front of the check in Item 900 contains pictorial similarities to the known writing of Lonnie Lewis . . . , but is defective in execution. This may indicate that this signature is an attempt to simulate a genuine signature of Lonnie Lewis.

‘When writing is unnatural or simulated, the true handwriting characteristics of the writer are not displayed[,] which is a limitation to the handwriting examination. Therefore, Lonnie Lewis could not be identified to nor eliminated from being the writer of the "Lonnie Lewis" signature on the front of the check in Item 900. Lonnie Lewis was probably not the writer of the handwriting and hand printing on the front of the check in Item 900, excluding the "Lonnie Lewis" signature on the front of the check.

‘Lonnie Lewis could not be identified to nor eliminated from being the writer of the "Brad Ryan" signature on the reverse of the check in Item 900. Bradley Ryan . . . , could not be identified to nor eliminated from being the writer of the handwriting, hand printing, or "Lonnie Lewis" signature on the front of the check in Item 900.

‘It is probable that Bradley Ryan was the writer of the "Brad Ryan" signature on the reverse of the check in Item 900.’”

The last paragraph of the decision reads: “From the foregoing evidence, the jury could reasonably have inferred that Lewis did not write the check to Ryan and that Ryan took the check from Lewis's house at or very near the time he killed Lewis. Viewed as such, the same evidence created an inference of guilt that reasonably tends to support the

verdict that Ryan robbed Lewis, as charged.

“Judgment affirmed.”

COMMENTARY: The examiner did an impressive amount of work, so I quote the description in full as a way to acknowledge it.

2014

888. *Blythe v State*, No. 71A03-1306-CR-228 (Ct. App. IN 2014)

Blythe was charged with forgery of signatures on election petitions. Various kinds of evidence were presented by the state, including the testimony of a handwriting expert whether Blythe was the one who “placed the falsified signatures on the petitions.” Blythe lost on his main point of appeal, that the trial judge incorrectly let the prosecution amend its charges based on the evidence, so that the charge became not just uttering nine false petitions but the making of a false petition. The Court of Appeals said all false signatures were the same act in the circumstances of the case, so there was only the one uttering of the collected signatures, and that the convictions for uttering and making a forged instrument derived from the same act and same evidence, so only one could be imposed. The prosecution could amend its charge to include both making and uttering the forged signatures since the defense repeatedly denied having done either, thus it had actually defended against both charges during the trial.

COMMENTARY: The above is my understanding of the legal rambling in the case, an understanding that could be understandably perplexed. Attorneys and academic critics of forensic practice say forensic experts perplex matters inexcusably. I submit that, though they do at times, they do so hardly as frequently and thoroughly as attorneys and academics are able to.

889. *Houssain v State*, No. 89A04-1307-CR-330 (Ct. App. IN 2014)

“In this interlocutory appeal, Kristin Houssain (‘Houssain’) appeals the trial court's denial of her motion to dismiss her charges of forgery and attempting to obtain a controlled substance by fraud.

“We affirm.”

At trial she had relied on testimony from her document examiner: “On February 13, 2013, the trial court held a hearing on the motion to dismiss. Houssain presented testimony from Jim Steffen (‘Steffen’), a forensic document examiner. Steffen testified that there was clearly an alteration between the prescription Sexton wrote and the prescription submitted to Kroger. However, he stated that had he had access to the original prescription, he would have been able to conduct additional tests to determine whether the alterations were purposeful or accidental. In addition, Steffen testified that it was entirely possible that the original prescription had been purposefully altered and the original could be inculpatory of Houssain's guilt. He also stated that even if he were able to determine whether the alterations were purposeful or accidental, he would have no way of determining who

actually altered the original prescription.”

All the arguments on appeal, that the forged prescription was exculpatory because the State had lost the original, had been covered in Steffen’s testimony nor had it been pled that the State had acted in bad faith in not preserving the original.

COMMENTARY: Mr. Steffen shows that no setback to a forensic expert’s credibility, as stated in *Gill v Gill* discussed among Indiana appeal cases for 2013, need hamper one’s further career. One wonders whether attorneys know to do a search of the case law to uncover easily uncovered references to their own or opposing forensic experts. Mr. Curtis Baggett offers even more assured proof that one’s capacity to make money is hardly hampered by adverse rulings from courts of law. On the other hand, some litigants and attorneys might find such rulings to be apt evidence that they have found the very kind of expert they need for their particular kind of contention.

890. *Sanford v State*, No. 82A01-1312-CR-552 (Ct. App. IN 2014)

“Additionally, a handwriting expert testified that the bill of sale, with the exception of Sanford’s signature and a number that was written in the body of the document, was written by Ling. The State also presented testimony that an investigation of the person listed as the seller on the bill of sale resulted in a conclusion that the person does not exist..... Sanford also testified as to his inability to read and write due to his dyslexia; however, his testimony was contradicted by that of the handwriting expert who testified that Sanford read and completed forms by himself.”

COMMENTARY: Besides from the handwriting expert, the evidence seems to have been the fruit of a falling out among thieves, since Sanford’s partners in crime were witnesses for the prosecution.

2015

891. *Freed v State*, No. 79A02-1506-PC-599 (Ct. App. IN 2015)

Freed was convicted of robbing a convenience store at gunpoint. A direct appeal affirmed the conviction, and an appeal of denial of post conviction relief was denied. It is reported that Freed opened the depths of his soul to a cell mate he apparently never met before and that he solicited a hit man in a letter written while he was in jail. This letter was as a confession to the robbery, and the recipient turned it over to authorities.

COMMENTARY: I assume some American criminals are so imprudent as to prove their guilt when the case report describes an otherwise inability of prosecutors to do so. But do we have such an inadequate educational system that we turn out so many downright dumb criminals?

892. *Stibbins, et al., v Foster, et al.*, No. 18A02-1410-PL-750 (IN Ct. App. 2015)

Footnote 2 says this about the handwriting expert for the Plaintiffs:

“The expert testified that dozens of specimens of Warren’s handwriting were

forgeries. She was also certain that the signatures of all of the witnesses to nearly all of the documents at issue in this litigation were forgeries. Carol found this expert on the Internet. The expert received her training from another Internet vendor who also offered programs on, among other things, how to predict the gender of unborn children through the handwriting of a parent. At times, the jurors laughed audibly during the expert's testimony.”

COMMENTARY: If courts of law themselves sincerely wished to end outlandish forensic testimony, they would name such experts as described above. Additionally, this would protect someone who might be suspected of being the laughable expert but is not. Defense attorneys should have mounted an *in limine* motion to disqualify, though they might have done good research since the sentence on predicting gender hints at much more of the same.

Upon rehearing, the last sentence about jurors laughing was stricken, but hopefully none of the laughter was stricken.

2016

893. *Conover v State*, No. 73A01-1506-CR-513 (Crt. App. IN 2016)

COMMENTARY: Capital One sued Conover in small claims court for non-payment of a credit card bill. Maybe because he was the only witness, Conover prevailed in small claims. However, the judge suspected some violations of law and referred the case to the local prosecutor. Conover was found guilty of perjury since statements had been sent to his address for years and were duly paid. A document examiner said Conover had signed the records from Capital One. Conviction was reversed and remanded since illegal hearsay formed part of the evidence for conviction.

The moral to this story is do not try to resolve one mess by making a bigger one.

894. *Sanders v State*, No. 45A04-1506-CR-648 (Ct. App. IN 2016)

COMMENTARY: The opinion of a handwriting expert was received.

3. Indiana Supreme Court.

1993

895. *Stahl v State*, 616 N.E.2d 9 (IN 1993); reaffirmed, No. 45A04-1303-PC-137 (Ct. App. IN 2014)

At page 11: “The next day [after the robbery/murder], Stahl was questioned by the police. He admitted being in the store between 4:30 and 6:00. He stated that he had paid for the motorcycle with cash and that just before he left the building, a white male entered with a weapon hidden under his belt. Additionally, Stahl turned over his copies of the sales documents on the motorcycle. After reviewing the documents, the victim's son testified that this paperwork was not signed by his father and was not completed in the same manner that

his father would have completed it. A handwriting expert later identified some of the victim's purported handwriting on these documents as belonging to Stahl and not the victim. Finally, two witnesses testified at trial that Stahl had admitted shooting the victim.”

Conviction for armed robbery and murder was affirmed.

The 2014 appeal decision states verbatim the quote given above.

COMMENTARY: There was more verbatim likeness between the two case reports, though I did not track how much was the same. Why not some statement such as, “We adopt the very same statement made previously by such-and-such court decision”?

The second appeal considers claim of inadequate assistance of counsel at trial and on the previous appeal: “In fact, his argument on all of the claims raised in this category suffer from the same fatal deficiencies. The issues are raised in the context of the ineffective assistance of appellate counsel and require argument and analysis concerning the legal viability and relative strength of those arguments vis-à-vis the issues raised on direct appeal. Yet, Stahl's argument, such as it is, is devoid of any discussion of these matters and indeed seems more appropriate for a direct-appeal challenge to the reasonableness of the sentence. In short, Stahl identifies the issues and states the conclusions, but provides no legal argument germane to the issue of ineffective assistance of appellate counsel which guides us from one to the other. The issue of the ineffective assistance of appellate counsel is therefore waived. See *Lyles v. State*, 834 N.E.2d 1035 (Ind. Ct. App. 2005), trans. denied; App. R. 46(a)(8).”

It seems to me the decision in the second appeal gives Stahl good reasons for a claim of inadequate assistance of counsel in that later appeal. Appeal counsel offered no proper legal argument, which was appeal counsel's job not Stahl's. It would be interesting to see the reasons why the legal inadequacy of the second appeal would not be credited to the appeal counsel who presumably authored it all.

1995

896. *Davis v State*, 658 N.E.2d 896 (IN 1995)

“The defendant argues that the following portion of the prosecutor's final argument to the jury includes improper final argument constituting prosecutorial misconduct.

‘You did hear Sergeant Panhorst from the Indiana State Police testify regarding the exemplars that were taken from the defendant, Raymond Davis. And you will recall that he told you that there are four reasons for distortion. Ladies and gentlemen, the last reason on this list was an attempt to disguise the handwriting. And I submit to you ladies and gentlemen, that that's exactly what Raymond Davis was doing when he was in that room writing for four and one-half hours. That he took his time. He was deliberate in the process of writing on each and every page of that sample, because Mr. Davis knew that the police knew that it was his handwriting this time. So he couldn't make it look like that writing that was in the letter because he did not want to be associated with that letter.’

“The prosecutor only invited the jury to make reasonable inferences from the evidence.”

COMMENTARY: Formerly, according to published professional papers in document examination, it was routine procedure to record for every requested or dictated exemplar from a suspect the day and time it was written and the precise instructions given to the suspect on how to write it.

O. IOWA CASES.

1. *Iowa Trial Courts.*

I have no case reports for Iowa trial courts.

2. *Iowa Courts of Appeal.*

1996

897. *State v Forsyth*, 547 NW 2d 833 (IA Ct. App. 1996)

COMMENTARY: A handwriting expert said Forsyth himself had written two alleged suicide notes of relative he was convicted of killing.

898. *State v Uthe*, 542 N.W.2d 810 (IA 1996)

At page 815-816: “The lynch pin of the State's case was officer [Howard] Freeman's document-examination testimony. Although no witness could positively identify the defendant as the person who wrote the checks in question, the officer testified that the handwriting on the checks was the defendant's. Troy Tullis was able to identify Uthe as the person who tendered a check on the same account in Boone just two days after the alleged forgeries. Furthermore, after passing this check in Boone, the *816 defendant was apprehended with the Ross checkbook in his possession. Thus we find there was substantial evidence in the record to support the jury's verdict.”

COMMENTARY: There is some discussion about how the exemplar used by Freeman was properly authenticated, as well as the limitations for what it was offered to prove or what could be deduced from it. The text seems to suggest that only the one exemplar was used. If so, that was where the defense attorney should have directed his challenge.

2001

899. *State v Crawley*, 633 N.W.2d 802, 2001 Iowa Sup. LEXIS 160 (Iowa 2001); post-conviction relief denied, *Crawley v State*, 2007 Iowa App. LEXIS 203 (Iowa App. 2007) 2001 Iowa Sup.

A handwriting expert testified that Crawley disguised his handwriting exemplars. He was convicted of forgery. The claim of ineffective assistance of counsel because of failure to consult a handwriting expert was reserved for a post conviction review.

2007 Iowa App.

At a post conviction review, the trial court found no ineffective assistance of counsel for failure to consult a handwriting expert and other related issues. Denial of relief was affirmed.

COMMENTARY: Since deliberate disguise of exemplars is basis for an inference of consciousness of guilt, it is a proper subject of expert testimony.

This is another instance of document examiners not following previously and long established standards of performance relative to handwriting exemplars. See my survey of same posted open access at:

<https://archive.org/details/ExemplarsGenuineSamplesForComparisonWithQuestionedWritingsAnd>.

I suspect much contemporary expert testimony as to disguise in requested, or even court-ordered, exemplars, is based on lack of knowledge regarding instructions and conditions during the writing, especially when one person takes the exemplars and another bases expert opinions on them. I cannot recall a modern case report referencing a contemporary record of the instructions and proceedings during the taking of requested exemplars. This situation is fraught with much unjust harm to the writer, however unwitting such might be. It is also an example of general lack of standards in document examination for creating, maintaining and making available to all parties contemporary notes on the expert's activities and investigations along with all data obtained.

900. *State v House*, 2001 Iowa App. LEXIS 107 (Iowa App. 2001)

The State's handwriting expert, Officer Greg Engel, testified that defendant wrote an incriminating letter. When during cross-examination and later in argument defense counsel suggested Engel's testimony was unreliable because he worked for the prosecution, it was proper for the prosecutor to bring out on redirect and in rebuttal argument that the letter had been sent to a defense expert who did not testify.

COMMENTARY: This was a case of throwing rocks inside one's own glass house.

2009

901. *Oehlert and Oehlert v Campbell*, 2009 Iowa App. LEXIS 709 (Iowa App. 2009)

COMMENTARY: Handwriting expert, Dr. Joe Alexander, testified.

2010

902. *State v Habben*, No. 09-1038/09-0111 (Ct. App. IA 2010)

COMMENTARY: A handwriting expert testified.

2015

903. *State v Huser*, No. 14-0277 (IA Ct. App. 2015)

Footnote 9 reads: “The handwriting expert explained at trial the different conclusions he can reach after conducting his analysis. He can determine there are ‘indications’ that something ‘may or may not have been written by someone.’ He can determine it is ‘probable,’ meaning it was probably or probably not written by someone. He can determine it is ‘highly probable’ that the document was or was not written by someone. Finally, if he is ‘convinced’ the document was or was not written by someone, he would say he could ‘identify’ or ‘eliminate’ someone as the writer. In this case, he was only able to come to the conclusion that Huser ‘probably’ wrote the note in question because of the little amount of handwriting and the lack of complexity of the writing on the document in question.”

COMMENTARY: In explaining standard, technical terminology, one does best to keep to the wording in the official publication unless specially gifted with clarity in use of words. When I was a kid, we would say that an explanation that was more perplexing than the original statement was being “as clear as mud.” I am perplexed why defense attorneys will at times go to great lengths to clarify for the jury an essential point in the prosecutor’s case that the prosecutor left quite muddled. Here there is a commendable explanation of terminology.

904. *State v Newman*, No. 13-1640 (IA Ct. App. 2015)

“Following a jury trial, Chico Newman was convicted of the first-degree murder of his wife, Crystal Newman. Chico's primary defense theory was that Crystal committed suicide after they argued over her infidelity. Alternatively, he claimed Crystal's paramour, Joshua Patrick, killed Crystal.”

Conviction was affirmed. A note, stained with Crystal’s blood, was found in the kitchen. Footnote 14 states: “DCI criminalist and forensic document examiner Gary Licht reconstructed the torn note. On one page Crystal had written her name multiple times with three different last names—Newman, Johnson, and Patrick. In another portion, Crystal had written she should stop seeing him, presumably Patrick, and she planned to move to Iowa City with her kids.”

COMMENTARY: Presumably Licht identified the writing as Crystal’s.

3. Iowa Supreme Court.

1995

905. *Winkel v Erpelding*, 526 NW 2d 316 (IA 1995)

COMMENTARY: A handwriting expert testified.

2000

906. *State v Barnholtz, et al.*, 613 N.W.2d 218, 2000 Iowa Sup. LEXIS 129 (Iowa 2000)

At page [*16]: “The State’s handwriting expert testified that in his opinion the signature of ‘Randy Gray’ was *probably* made by Bonnie Barnholtz. The expert admitted that ‘probable’ means room for doubt because ‘irreconcilable differences are present.’ Given this weak testimony, it is not surprising that the jury found Bonnie not guilty.”

COMMENTARY: If there are irreconcilable significant differences present, the finding must be an elimination of the suspected writer, as Ordway Hilton and other major authors have taught.

P. KANSAS CASES.

1. *Kansas Trial Courts.*

I have no case reports for Kansas trial courts.

2. *Kansas Court of Appeal.*

I have no case reports for Kansas Court of Appeal.

3. *Kansas Supreme Court.*

1993

907. *State v Kingsley*, 252 Kan. 761, 851 P. 2d 370 (KS 1993)

The report begins: “Alan W. Kingsley appeals from his jury convictions of first-degree murder, K.S.A. 1992 Supp. 21-3401(a); aggravated robbery, K.S.A. 21-3427; aggravated arson, K.S.A. 21-3719; and forgery, K.S.A. 21-3710(b). He was sentenced to life without parole for 40 years, 15 years to life, 15 years to life, and 1 to 5 years, respectively. The life sentence is to run consecutively to one term of 15 years to life. The other term of 15 years to life is to run concurrently with the 1-to-5-year term, and the concurrent terms are to run consecutively to the others.”

In the end Defendant had one of those victories that make no practical difference: “The convictions of first-degree murder, aggravated robbery, and forgery are affirmed. The conviction of and sentence for aggravated arson is reversed, and the case is remanded to the district court with directions to resentence the defendant for conviction of arson, a class C felony.”

COMMENTARY: Almost as an aside, it is noted that a handwriting expert testified that Kingsley’s girlfriend endorsed a check.

2007

908. *In the Matter of the Adoption of X.J.A.*, a minor child born 12-21-2003, 36 Kan. App. 2d 621, 142 P.3d 327, 2006 Kan. App. LEXIS 919; reversed, 284 Kan. 853, 166 P.3d 396, 2007 Kan. LEXIS 486

Adoptive parents offered expert testimony of Barbara Downer that the birth mother had signed a consent form to the adoption. The trial court found a voluntary consent, the Court of Appeals reversed, and the Supreme Court reversed once more, upholding the trial court's ruling in favor of the adoptive parents.

COMMENTARY: Ms. Downer was president of National Association of Document Examiners from 2005 to 2009.

2013

909. *In the Matter of Scott C. Stockwell*, 295 P.3d 572 (KS 2013)

In a review of attorney Stockwell's cases that got him into trouble and resulted in a one-year suspension of his license, one case involved a handwriting expert:

"10. In January 2011, Mr. Brittingham provided the Respondent with a copy of Mr. [B.]'s 2000 last will and testament, a copy of Mr. [B.]'s living will, a copy of powers of attorney, and a copy of a waiver. The waiver, purportedly signed by Mrs. [B.], released her claim to real property owned by Mr. [B.]. Mrs. [B.] denied signing the release. Later, the Respondent retained Barbara Downer, an experienced handwriting expert to compare the signature on the waiver with Mrs. [B.]'s signature. Mrs. Downer concluded that the signature on the waiver was not Mrs. [B.]'s signature."

COMMENTARY: Ms. Downer served as president of NADE as well in other official positions.

2015

910. *State v Moyer*, No. 105,183 (KS 2015)

Moyer was convicted of sexual molestation of a minor. Since the trial judge should have both recused himself and determined whether defense counsel had a conflict of interest, the case was remanded for a determination on those two issues.

COMMENTARY: Such case reports are hardly delightful reading. The prosecution's handwriting expert testified Moyer had written an agreement which was part of his method of sexual exploitation of his victims.

2016

911. *State v Netherland*, No. 112,806 (KS 2016)

"A forensic document examiner from the Kansas Bureau of Investigation (KBI)

analyzed the three pieces of jail mail and compared them to known handwriting samples from Netherland. He would testify at trial that the known samples were inconsistent. He said that Netherland was likely to have written the three letters but that he could not positively identify him as the author because the known samples were not ‘naturally prepared.’”

COMMENTARY: One is tempted (but one should resist all such temptations) to consider an opinion that a handwriting “was not naturally prepared” as being a slightly brainless opinion. First, whatever the cause of the features of the writing in question, the effects in the writing are naturally caused by the nature of the manner in which it was written. So, if the writer has a primary, initial tremor, a fine tremor naturally appears when the act of writing first begins. If one deliberately shakes the hand and fingers while writing, a gross tremor naturally appears in the writing since it is the natural effect of deliberately shaking one’s hand and fingers while writing. A little logic and a particle of two of perspicacity should challenge the handwriting expert to be so expert as to explain the disparate causes and conditions of the same graphic phenomenon. Bear in mind that every feature in a handwriting can have two or more causes, an inconvenient fact most handwriting experts seem too inexperienced to grasp much less explain.

912. *State v Seacat*, No. 110,360 (KS 2016)

The Seacat home was burning, and the wife’s murdered body was found in the upstairs bedroom. Her journal was found with an apparent suicide note on the last page. Dennis McPhail, certified forensic document examiner, testified for the State that “there were certain incongruities in the last journal page that led him to conclude that the writing had been traced from other samples of Vashti’s handwriting. These discrepancies included tremorous writing and smearing, which contrasted sharply with the fluid writing that was highly consistent in Vashti’s known writing samples. He pointed to features indicating that the writing had been done slowly, with added corrections to certain letters. He noted that Vashti’s lower case ‘d’ was very consistent throughout many samples of her handwriting, but it was formed using a different stroke in the last journal page. These and other specific disparities led him to conclude that the suicide note was probably traced and was a ‘spurious document.’

“Avis Odenbaugh, a forensic document examiner called on Seacat’s behalf, testified that the journal page was the product of natural writing and that the journal page in question was written by the same person who wrote the other entries in the journal. She ruled out a tracing of the text based on apparent ink flow. Odenbaugh testified that differences in the handwriting between the journal page and other samples of Vashti’s handwriting could be explained because of mood or tension. On cross-examination, she acknowledged that the first part of the journal page appeared unnatural and that there were tremors apparent in writing some of the letters, but she explained that those could be due to medication or state of mind.”

COMMENTARY: The complete descriptions of the observations and logic by the

two experts are reproduced. Odenbaugh had to provide reasonable explanations for all significant differences between the suicide note and the wife's exemplar writings. To be reasonable, such explanation must be based on observable, demonstrable and verifiable data; the data must be interpreted by theories that can be clearly explained and shown to be valid, and correct logic must be used to tie it all together for a compelling inference. The phrase, "she explained that those [significant differences] could be due to medication or state of mind" suggests purely speculative explanations. To avoid mere speculation, the expert, for example, would have to state what medication decedent was reported as taking, what the medical literature says the effects of the medication are relative to the graphic motor sequence, and how the physical characteristics of the writing show those effects.

Q. KENTUCKY CASES.

1. *Kentucky Trial Courts.*

I have no case reports for Kentucky trial courts.

2. *Kentucky Courts of Appeal.*

1998

913. *Sroka-Calvert v Watkins et al.*, 971 S.W.2d 823 (Ct App. Ken.L.R. 1998)

An expert testified the questioned signature was not genuine but "that these signatures matched other purported signatures...." S. A. Slyter was the expert.

COMMENTARY: Mr. Slyter is a member of AFDE and certified by BFDE.

2003

914. *Griggs v Commonwealth*, 2003 WL 22745707 (Ky. App. Nov. 21, 2003)

This case is discussed by Risinger in "Cases Involving the Reliability of Handwriting Identification Expertise since the Decision in *Daubert*," 43 *Tulsa Law Review*, 477-595 (2007). I have not been able to retrieve a copy of the report. Risinger states the key issue as to handwriting thus, but with my omission of his references: "[Paul] Kramer was called at the second trial by the prosecution to testify that he had concluded that the exemplars were attempts at disguise because they were 'very deliberately written' and were written with such pressure that he 'could feel the indentations very strongly at the bottom of the paper,' and that normally that indicates 'an attempt at disguise.' The defendant objected to this as 'scientifically unreliable.' As noted in relation to *Spann v. State*, the ability to determine disguise is a task concerning which there is a complete absence of research to evaluate the claims of the guild."

COMMENTARY: Prior to *Daubert* there had been published material on the

indicators of disguised writing and how to discern them, and subsequently there has been published research on the aptitude of groups of document examiners at determining disguised writing. Unfortunately, such research usually suffers from the misunderstanding Kramer demonstrated and the unawareness of defense counsel, and of any defense experts if any were employed, in what is needed to make Kramer's claimed evidence to be evidential. First, the same indicators Kramer stated could well be from other causes so he needed to consider and eliminate alternatives. Second, he had to be made to demonstrate none of these indicators were present in Griggs's normal writing. Third, he ought to have done the intelligent and rational thing of obtaining writings by Griggs in the ordinary course of social and business communications, versus the very routine and inept thing of relying only on requested exemplars obtained in an inexperienced manner.

2007

915. *Richardson, et al., v Head, et al.*, 236 S.W.3d 17, 2007 Ky. App. LEXIS 145 (Ky. App. 2007)

"Numerous witnesses were called by the Appellees [Defendants], each testifying that Edward's ability to speak or write was either greatly impaired or non-existent on or before October 3, 2002, the date he purportedly signed the codicil. The Appellees' handwriting expert, Steve Slyter, testified he did not believe either the signature on the will or codicil was authentic, having been 'traced.' Dennis Flickinger (Flickinger), an occupational therapist who visited with Edward for several months before and subsequently after October 3, 2002, testified Edward had great difficulty in communicating orally or in writing. He further testified as of October 3, 2002, Edward could not grip a pen in order to write.

"Witnesses on behalf of the Appellants gave an opposing opinion [*4] that, not only did Edward know what he was doing, he was able to communicate orally and he was also able to write as late as January 2003.... Clarke Mercer, the Appellants' handwriting expert, testified Edward signed both documents."

Appellants' motion for new trial on basis Flickinger had committed perjury was denied by the trial judge, and the denial was upheld on appeal. The evidence of alleged perjury, which was a video of decedent a month before the will and codicil were signed, had been available before trial. The appeal court said it supported his inability to have written his signature as claimed.

COMMENTARY: This case underlines the value of advice from Ordway Hilton and others for the handwriting expert in such cases to obtain and study medical records for their data regarding ability to write. Since medical notations are a specialty, it is prudent to consult with an RN or doctor or other qualified medical professional.

Mercer is diplomate with ABFDE, and Slyter is a member of AFDE.

2009

916. *Lester v Commonwealth*, 2009 Ky. App. Unpub. LEXIS 343

Lorie Gottesman, a forensic document examiner with the FBI, testified on direct examination that she felt strongly that defendant had not written an apology letter. She depended on comparison of several individual letters, but said other letters indicated otherwise. However, she could not eliminate him as the writer since his writing showed a higher skill than the apology letter and he may have “come down” in writing skill. Gottesman said that her analysis was peer-reviewed by a colleague and that her results were independently verified.

Defense attorney did not consult a handwriting expert. That with other errors required vacating the conviction and remanding for a new trial.

COMMENTARY: Using comparison of individual letters one can almost always prove anyone did or did not write anything. Testifying that some other expert agrees with one’s opinion is called bolstering and should be objected to strenuously. The reviewing expert is not available for cross-examination but has had his “testimony” presented to the jury while his very existence, much less his testimonial voice, has not been verified by the fact-finder, only asserted by the self-interested bolstering of the live witness.

2010

917. *Amos and Sibley, v Clubb, et al.*, No. 2009-CA-001544-MR., Court of Appeals of Kentucky (December 10, 2010)

Steven Slyter’s video deposition regarding a traced signature was admissible in jury trial.

COMMENTARY: A motion tried to keep Slyter’s testimony out indirectly by having the document in question kept out on relevance grounds.

2014

918. *Cross v Commonwealth*, No. 2011-CA-002136-MR (Ct. App. KY 2014)

COMMENTARY: In the section, “II. Whether trial counsel subjected the case to meaningful adversarial testing,” one item showing such was the case was that a document examiner testified for the defense. No further particulars are given.

2015

919. *Hardin v Montgomery, and related appeals*, 2015-CA-000305-MR (KY Ct. App. 2015)

Hardin, Democrat, prevailed in an election for judge, but the trial court vacated the

election upon a challenge by Republican Montgomery. The trial court was upheld on appeal. Thomas Vastrick testified to discrepancies in 59 voters' signatures. The dissent observes that Steve Slyter testified that Vastrick's use of one exemplar for comparison was unreliable. Also, the only two witnesses to their signatures said they had indeed signed. Handwriting experts in Kentucky might wish to keep a citation by the dissent handy: "Even our case law teaches that comparison of a single signature with a challenged signature is not a reliable method to determine the authenticity of the signature. *Beauchamp v. Willis*, 300 Ky. 630, 636, 189 S.W.2d 938, 941 (1945)."

COMMENTARY: It was a cumulation of items, none of which alone sufficed to justify vacating the election, that persuaded the majority but not the lone dissenter. Slyter was right in his opinion, while typically judges and election officials have only the voter's signature when registering to vote as an exemplar, so Vastrick probably provided the best help he could. Maybe the solution is a more extended and expensive examination using every signature by a voter whenever a vote was cast by the person.

The applicable passage from the case report provides good advice at pages 635-6 for those embroiled in an election dispute: "What is considered by appellant as impressive evidence of fraud is that of experts introduced, one who, comparing the registration book with the signature book, said his belief was that 95 per cent of the challenged signatures were not written by the same person. This expert testimony was considerably shaken when appellee brought forward twelve persons whose signatures had been declared false by the experts, who said they had signed the signature book. In addition there were more than 300 affidavits filed which showed that affiants had legally voted, thus showing that the opinion testimony was not absolute or convincing. They admitted that their conclusions were not based on standards *636 usually adopted by experts in reaching conclusions as to authenticity of signatures; one of them testifying on cross-examination, basing his opinion on comparison of a single genuine with a challenged signature, said that he would be lucky if he 'hit fifty per cent.'"

920. *Norwich and Quammen v Norwich, et al.*, No. 2014-CA-000216-MR (Ct. App. KY 2015)

The paragraph on the expert testimony is this:

"Ronnie and Jennifer introduced the testimony of handwriting expert Steven Slyter. He is a forensic document examiner. Mr. Slyter examined the December 28, 2004, statement to determine whether Ronnie's signature was genuine. His opinion was that the signature on the page was not Ronnie's. The signature was significantly different than the exemplar provided because it appeared to be slowly drawn. Mr. Slyter also examined the July 1, 2004, deed to determine whether Linda's signature on the notary line was genuine. Linda had testified by deposition that this was not her signature. Mr. Slyter determined that the signature was genuine because it had all of the characteristics of her exemplars. On cross-examination, Mr. Slyter agreed that signatures may vary for various reasons, including being in a hurry."

COMMENTARY: It seems that one brother committed fraud to obtain sole title to the family property and that the other used forgery to rectify the matter. If one needs reminder how relatives can cheat each other and how a judge can still sort it all out, this case report is well worth the reading. However, I prefer for now to offer suggestions how you might handle the matter if Ronnie were your client

The statement that Ronnie's "signature was significantly different *than the exemplar provided*" suggests that only a single exemplar was used by Slyter, which would very rarely yield the tiniest of reliable results. Though there is no numerically precise standard rule for number of exemplars, only generally agreed upon guidelines, one could find other exemplars than the one referenced and hopefully demonstrate a different outcome if each single one of the several exemplars were used.

Further, that a slowly drawn signature is said to prove the signature false suggests that, if one wishes to prove one's genuine signature is false, that is written by another, one merely need draw it slowly. This logic is used more often by handwriting experts than common sense would countenance its validity. At trial one could use a white board or large paper pad to write one's signature at one's usual tempo then to "draw it slowly" a second time. Based on the expert's theory for Ronnie's signature, ask: "Which of the two signatures that I just wrote is drawn slowly as you said Ronnie's signature was? Very good. Now, based on your theory, which of the two signatures that I just wrote I did not in fact write?" It is one of those questions for which any answer is worse than the illogical, but logically consistent, one.

3. Kentucky Supreme Court.

2003

921. *Florence v Commonwealth*, 120 S.W.3d 699, 2003 Ky. LEXIS 182 (KY 2003); rehearing denied by *Florence v Commonwealth*, 2003 Ky. LEXIS 294 (Ky. 2003)

Chris White testified as handwriting expert for the Commonwealth. On appeal defendant said Trial Court did not hold a *Daubert* hearing. In Kentucky, once appellate courts hold reliability has been satisfied, trial courts can take judicial notice of it. However, a trial court could still hold a *Daubert* hearing if it believes that would be helpful or if it had doubts regarding the particular expert's testimony. Florence had not raised a specific issue about reliability while the Trial Court had taken judicial notice of the reliability of handwriting analysis, and so there was no abuse of discretion. What disturbed the Supreme Court was White's testimony that handwriting analysis was "more precise than DNA evidence, thus, in effect, testifying in favor of his own testimony." However, there had been no objection at the time, so the issue was not preserved for appeal.

COMMENTARY: At least Kentucky is sensible about the whole thing. The expertise itself can be subject to judicial notice, but a party can challenge a specific expert's testimony if there are grounds for doubting such expert's reliability. It seems there were

ample grounds to challenge White's reliability that defense counsel seems not to have been cognizant of.

Critics might moan the unwarranted self-serving opinion of White that DNA expertise has nothing on handwriting expertise. It is the lack by the cross-examiner of thorough preparation and prudent seeking of advice from another handwriting expert, who engages in serious and broad ranging self-study, that let the witness escape what ought to have been a disqualifying, or at least thoroughly impeaching, cross-examination. It is an illusion that all the most perfect and detailed rules, the installing of forensic oligarchies, and the riding herd on every forensic expert witness will magically eliminate such results from neglect of basic preparations for trial.

Two civil actions in federal District Court, *Florence v Meko*, saw all requests by Florence denied, some with prejudice. Handwriting evidence was not an issue in these federal civil actions.

2010

922. *Roach v Commonwealth*, 313 SW 3d 101 (KY 2010)

Roach was convicted of several crimes related to check forgery on the account of an elderly lady to whom she was caregiver. Since the lady had poor eyesight, others, including Roach, filled out her checks before she signed. The son gave testimony that some check signatures did not look like his mother's.

At page 107: "Roach contends that the trial court erroneously admitted opinion testimony from lead detective Robert Duvall concerning whether the signatures on certain checks were likely Eba's. We conclude that to the extent that the trial court erred in admitting Duvall's testimony concerning his examination of signatures on the checks, the error was harmless."

At pages 107-109: "Perhaps the case at hand presented more than the usual evidentiary challenges in judging the authenticity of signatures because of Eba's impaired vision and the absence of any official exemplar of her signature, such as a current driver's license. Eba's signature varied on different documents, and she depended upon the handwriting of others to complete all but the signature on her checks....

"As Roach points out, the trial court did not allow admission of Duvall's testimony as expert testimony under KRE 702. Despite having taken some college courses that covered handwriting analysis and having had experience in cases involving fraud and crimes against the elderly, Detective Duvall testified that he was 'by no means a handwriting expert.' The trial court did not make any finding that he was a handwriting expert. Instead, the trial court admitted Detective Duvall's testimony as lay witness opinion testimony under KRE 701. Having reviewed his testimony, we note that Detective Duvall never directly opined that the signatures on certain checks were actually forged. More accurately, in the context of explaining how the investigation proceeded and why the prosecution went forward, Detective Duvall recounted how he recognized significant

differences between the signatures on those checks that Wendell purported to know were Eba's as compared to those that Wendell contended were suspicious.”

COMMENTARY: It seems Kentucky has a slightly different rule than most states which would have considered Duvall’s testimony as that of an expert, and some discussion is devoted to this point. The generally accepted rule is not that the witness says there was a forgery, but whether knowledge of the handwriting was acquired from the case itself, especially in order to testify.

R. LOUISIANA CASES.

1. *Louisiana Trial Courts.*

I have no case reports for Louisiana trial courts.

2. *Louisiana Courts of Appeal.*

1993

923. *Dufhilo v D'Aquin*, 615 So. 2d 522 (LA Ct. App. 3 Cir. 1993)

COMMENTARY: In a decision on a suit by a reporter for remunerations not paid by her employer, there are extensive considerations of the legal reasons for remand, but for purposes of this text the expert’s evidence of false logged entries will be discussed. Technically “logged entries” refers to entries in any type of document that entails sequential entries at different times or occasions versus simultaneous entries made at the same time or occasion. It is one example of “relative dating,” which is the determination of which event came before or after another, rather than proving a specific time for the occurrences under consideration.

For example, one might be able to say one part of a house was erected before another due to the second having support members attached to the first but not vice-versa. Yet one might not be able to say which year or decade or even century either was built in. Any statement as to year, or even century, being an example of absolute dating. The finest absolute dating would be to give the date and the precise clock time an event occurred. The reason absolute dating is hardly ever absolutely absolute is that we are good, but not that good. Be careful of those who claim precision beyond the technical precision which the particular technology permits in the circumstances.

After trial, the trial judge had Robert G. Foley examine a notebook in which Defendant claimed to have kept a contemporaneous log of days Plaintiff did not work. Foley’s report was summarized by the trial judge thus at page 525:

“In summary from October 1988 to April 1989 the entries were written at one time in blocks, as were entries dating back to March 1987 with only one entry in that entire time period being a single entry. The expert commented on the pristine condition of those pages

in the notebook considering the bi-weekly entries allegedly made by Lennox.

“This evidence destroys Lennox's testimony that he made entries in his notebook bi-weekly. The court finds by a preponderance of the evidence that the subject notebook was manufactured after Dufhilo was terminated.

“These findings together with the fact that the managing editor kept a notebook on Arden Dufhilo and no other employee, beginning in 1987, the time period for this claim, support the proposition that her employer acted in an arbitrary and unreasonable manner, under the circumstances, in denying Arden Dufhilo her just wages and vacation pay. The claim for vacation pay in favor of Arden Dufhilo has been validated by testimony that there was no hard and fast ‘use it or lose it’ policy applied by The Daily Advertiser.”

924. *Hackman v Southern Farm Bureau Insurance Company*, 629 So.2d 531 (LA App. 5 Cir. 1993)

One issue at trial was whether Hackman signed a form selecting a \$5,000.00 limit for uninsured motorist coverage. At page 535:

“However, at trial, Gordon Hackman, the policy holder and plaintiff's husband, denied ever signing the form. At trial, a qualified expert in forensic document examination testified that the signature on the form was not that of the same person who signed other documents introduced as having been signed by Gordon Hackman. Farm Bureau only produced Larry Lee Ray, the insurance agent handling the Hackmans' insurance policy at that time. Ray stated that he could not recall whether Gordon Hackman signed the form.

“The trial court concluded that Gordon Hackman did not sign the selection of lower limits. This is a factual finding.”

COMMENTARY: I am not sure of either party's net win or loss on appeal, especially with each party bearing its own costs on appeal which are not given.

925. *Johansen v First Nat. Bank*, 626 So. 2d 752 (LA Ct. App. 5 Cir. 1993)

\$5,000 was withdrawn from Johansen's certificate of deposit, and she claimed it was by forgery:

At page 754: “The true owner of the check bears the burden of proof where forgery is alleged. LSA-R.S. 10:3-307(1)(a); *Kid Gloves v. First Nat. Bank*, 600 So.2d 779 (La.App. 5th Cir. 1992). The evidence shows that certain bank procedures, such as the notation of the withdrawal on the certificate of deposit, were not followed. Also, the endorsement is a misspelling of the plaintiff's name and the social security number used as identification for negotiation of the check was incorrect. Additionally, the notation of withdrawal, which was clearly entered at a later date than the deposit, is one year off. The testimony of the bank witnesses conflict with that of the plaintiff as to what happened on December 9 and 10, 1991 and the experts disagree on the subject of Mrs. Johansen's handwriting.

“At the close of trial, the court entered a judgment in favor of the plaintiff accompanied by extensive reasons supporting the judgment. It is clear from those reasons

that the trial court found Mrs. Johansen and her expert to be more credible than the bank witnesses....”

COMMENTARY: The lady prevailed, while litigants are comforted with the thought, if they shop enough, they will find some marginal handwriting expert willing to testify to just about anything. No doubt, always in fairly good conscience and with impressive credentials on paper if not in the soul.

926. *Succession of Salzer*, 617 So. 2d 244 (LA Ct. App. 4 Cir. 1993)

A portion of William Farrell’s testimony is given, and it provides good example of competence within a reduced standard of competence and of excellence within a very stretched standard of excellence. It provides scope for hints on addressing such loose bases for an opinion, however correct the conclusion. At page 246, with comments italicized and interlineated in square brackets, [].

Q. Based upon these known writing samples were you able to draw any conclusions as to whether or not Pauline Menendez Salzer signed her name to the questioned document P-1?

A. Yes. As a comparison with the known writing against the handwriting on the olographic will, P-1, I found such sufficient characteristics that were similar to state that I could identify the name Pauline Salzer in the test of the olographic will as well as the signature Pauline Salzer on the bottom of the olographic will. [*Not an ideal way to state it, but good enough.*]

.....

Q. Were you able to draw any conclusions about the remaining writings on the questioned olographic will which we have marked for identification purposes as P-1?

A. As I stated, for an examination we should have comparable letters and letter combinations. [*One should have such if one does not know the dynamic of the human graphic motor sequence and its work product, or if one needs to eliminate the true writer or identify the wrong writer.*] Those are handwriting characteristics to compare with questioned writings. However, in lieu of any known handwriting, that is comparable letter combinations, there's also other characteristics in the writings which you can draw from to give a leaning in the no conclusion aspect of your refinings [sic]. I found that the line quality of the writings, the shading, the speed of writings [*These are a small part of where one should have started for a scientifically reliable opinion.*], these were all consistent with the Pauline Salzer and the rest of the writings and I feel that it's more likely than not that the rest of this writing was written by Pauline Salzer [*But he must consider whether the writing instrument limits or does not permit individualized traits, such as ballpoint and fiber-tipped pens limit such expression. The rules about shading and related traits developed when nib pens using liquid inks were in vogue. Only research not yet done will validate an uncritical transferring of the old theories to modern pens.*].

Q. So you are saying it's your testimony that the same person who signed Pauline Salzer at the bottom and wrote Pauline Salzer in the text also wrote the remainder of the body of

this?

A. I'm not saying positively but I'm saying it's more likely than not. [*Typical confusion of handwriting experts regarding difference between an opinion and its assurance. They generally think a difference in degree of assurance creates a different opinion as to identification.*]

Q. And you are saying that based upon your forensic examination, scientific examination of the handwriting, its quality, shading, etc. is that correct?

A. That's correct. [*If this Q&A is typical of all his testimony in the case, it is hardly scientific, even in the most loose definition of science beyond an insistent claim of scientific expertise and the imitative practice and dress of it mentioned in the Starzecpyzel case. With an expert handwriting consultant who has mastered the relevant professional literature, the cross-examiner could seriously compromise the witness's usefulness, however correct the bottom line opinion may be.*]

1994

927. *Hamilton v Kelley*, 641 So. 2d 981 (LA Ct. App. 2 Cir. 1994)

COMMENTARY: The parties stipulated to what Robert Foley's testimony would have been. a.He holds master's degrees in chemistry and criminal justice and a *juris doctor*.

1996

928. *Cagnolatti v Hightower*, 692 So. 2d 1104 (LA Ct. App. 4 Cir. 1996)

COMMENTARY: Robert Foley testified that a 58 pulse rate had been altered to 88.

929. *In the Matter of the Succession of William Calhoun and His Wife, Bertha Calhoun*, 674 So.2d 989 (LA Ct. App. 2 Cir. 1996)

COMMENTARY: Robert Foley authenticated aa testament written inside a family Bible.

930. *State v Gordon*, 668 So.2d 462 (Ct. App. LA 4 Cir. 1996)

Footnote 3 reads: "At trial, Officer Marshall indicated that the signature on the license was not his and that he never lived at the address displayed on the license, and a handwriting expert identified the signature on the copy of the temporary driver's license as belonging to Gordon. Thus, this element of the offense was clearly established by the State."

COMMENTARY: The discussion of the legal basis for the false license being a forgery is explained to be because of its "efficacy," which is defined and explained. I hazard that in lay terms it amounts to "as long as someone can be taken in by it."

931. *State v Hattaway*, 674 So. 2d 380 (LA Ct. App. 2nd Cir. 1996)

Hattaway urged error in the testimony of document examiner Robert Foley, because the state failed to lay the proper foundation for the documents he addressed. There was no reversible error since another witness had laid the foundation.

COMMENTARY: There was no challenge to Foley himself.

932. *State v Smith*, 679 So.2d 193 (LA Ct App. 4 Cir 1996)

Defendant gave a sob story to induce a man to co-endorse check when cashing was refused due to lack of ID. It bounced, and true owner denied the endorsement. James Dupuis of New Orleans P.D. compared signature with handwriting exemplars obtained from defendant and said she did it. Problem was that the original check was not available and “photostatic copy” was used. Did they mean photocopy or print from microfiche? Duplicate may not be admitted if “(1) A genuine question is raised as to the authenticity of the original; (2) In the circumstances it would be unfair to admit the duplicate in lieu of the original; or (3) The original is a testament offered for probate, a contract on which the claim or defense is based, or is otherwise closely related to a controlling issue.” Then are given five rules for permitting “other evidence of contents.”

COMMENTARY: There was no need to prove contents but to prove identification of the writer beyond a reasonable doubt. Defense argued the wrong side of the issue regarding the duplicate’s admissibility. However, defendant was positively identified as passer of the check, so handwriting evidence was frosting on the State’s case.

1998

933. *State v Campbell*, 715 So. 2d 488 (LA Ct. App. 4 Cir. 1998)

Campbell was convicted of aggravated rape, the victim being his own son. He “was sentenced to serve life at hard labor in the custody of the Department of Corrections without benefit of probation, parole or suspension of sentence.” Conviction and sentence were affirmed. He had sent an inculpatory letter to his wife, which became part of the evidence against him.

At page 491: “Detective James Dupuis, assigned to the New Orleans Police Department's Crime Lab, performed a handwriting analysis comparing the inculpatory letter allegedly written by Campbell to a known sample of his handwriting. He said the handwriting in both samples was the same.”

COMMENTARY: The son’s damaged health is described, while the letter told the mother it was a matter of the boy’s “stage of becoming a man. It was a father-son discovery of realization of self....” And similar heartless drivel.

1999

934. *Bailey v Descendants of Fowler*, 746 So. 2d 130 (LA Ct. App. 3 Cir. 1999)

Robert G. Foley, a Forensic Document Examiner, determined that an alleged ancient plat, which is a map of a property with its boundaries and other characteristics, had been fabricated. Fowler had presented it in support of his claim to a portion of Bailey's property.

COMMENTARY: Part of Foley's evidence was another person wrote the name of the surveyor on record 30 years previously when the alleged plat was created. Part of the supporting evidence was the purported surveyor 30 years previously calculated total acreage as about a third of the actual acreage. Amateurs in any endeavor tend to give professionals an undeservedly bad reputation, forgery included.

935. *Scoggins v Frederick and related cases*, 744 So. 2d 676, 1999 La. App. LEXIS 2706 (La. App. 1999)

COMMENTARY: Testimony of J. Robert Murray, Jr., handwriting expert, was received.

936. *State v Green*, 736 So.2d 859 (LA App. 3 Cir. 1999)

At page 862: "Robert Foley, an expert in forensic document examination for the State, compared the green card bearing Edens' signature and writing samples done by her. After doing so, he felt it was probable that the person who signed the writing samples did not sign the signature on the green card."

COMMENTARY: I am sure Foley did not say he "felt" that it was, but that it was. For those who might not know, a "green card" is a card that used to be issued by INS to resident aliens. It is no longer issued, but those who have one may keep it. If one surrenders it or loses it or it is damaged, apparently one must take the new type of documentation that is not as convenient but is more cumbersome for the resident alien. In any case, if one holds a green card and is pressured to surrender it in favor of the new documentation, one would do well to consult an immigration attorney before doing so.

2000

937. *Succession of Vincent Lovoi*, 777 S2 627, 2000 LA Ap LEXIS 3443 (LA Ap 2000)

Claimants produced an olographic will that gave nothing to their sister, who presented testimony of handwriting expert Mary Ann Sherry. Sherry said two different people wrote the will and the exemplars supplied to her. The Trial Court ordered the will probated because, among other reasons, it was not shown whether or not the exemplars were written by decedent.

COMMENTARY: The handwriting expert is at the mercy, as it were, of one's own client. It is rudimentary that the client and client's attorney clearly prove to the satisfaction of the judge that the exemplars are more likely than not the genuine writings of the one who

purportedly made them. It is in part self-protection for the expert to bring to the client's attention all that must be proved as foundation for the expert opinion. Ms. Sherry is a certified member of NADE.

938. *State v James*, 754 S2 429, 2000 LA App LEXIS 577 (LA Ap 2000); appeal denied, 786 So.2d 113 (LA 2001)

COMMENTARY: Robert Foley testified that the same person signed the loan application as signed defendant's exemplars. Defendant robbed the financial firm to which he had made the loan application.

939. *State v Whitton*, 770 So.2d 844 (LA App. 4 Cir. 2000)

COMMENTARY: Document examination James Dupuis found that it was highly probable that motel registrations and four forged checks were of common authorship with Defendant's exemplars.

940. *State v Womack-Grey*, 764 So. 2d 108, 2000 La. App. LEXIS 1443 (La. App. 2000)

After a handwriting expert testified about a certain letter, the defense stipulated that Defendant had written it. It was her protestations of love for a man who, she said, destroyed her, that she would not betray him to the police though he would betray her.

COMMENTARY: The lady's broken heart received some succor, because her conviction was overturned on basis the State brought in unrelated criminal acts by her.

2001

941. *State v Ballay*, 800 So.2d 953 (LKA App. 5 Cir. 2001)

COMMENTARY: Nicholas Molligan gave expert testimony that Defendant had signed three documents.

942. *State v Gustavis*, 88 So.2d 1242 (LA App. 4 Cir. 2001)

COMMENTARY: Defendant was proven to be a multiple offender through the testimony of Chanda Pichon, who qualified as an expert in handwriting analysis.

943. *State v Sumling*, 786 So. 2d 843, 2001 La. App. LEXIS 838 (La. App. 2001)

Originally Sumling had a co-defendant, Johnson: "Handwriting exemplars [*6] were obtained from both defendant and Johnson. Detective Keith Bourque, a handwriting expert with the Jefferson Parish Sheriff's Office, testified that Johnson's writing did not match the signatures on the checks he was alleged to have forged. Because of that finding, charges against Johnson were subsequently dropped."

For Sumling, testimony from the same expert contributed to having his conviction reversed: "No eyewitnesses testified to having seen defendant take the check from Ms. Pontiff's office. There was no testimony that anyone saw defendant fill [Pg 11] out the

check. Most importantly, there was no expert testimony to show that defendant's handwriting matched the handwriting on the forged check.

"Detective Cunningham testified he obtained a handwriting sample from defendant and turned it over to the district attorney's office, but did not know what happened to the sample after that. Detective Bourque, the handwriting expert called as a defense witness at trial, testified that he received only a photocopy of defendant's handwriting exemplar. He could not use the copy to do a handwriting comparison. He requires an original sample in order to study the pen lifts and pressure. Thus, there was no testimony to show that defendant's handwriting is consistent with the signature on the check."

COMMENTARY: Bourque was correct that a copy would not permit him to make a positive identification. A copy may, however, show enough significant differences that cannot be credited to the copying process and thus may be positive proof of elimination.

2002

944. *State v Williams*, 822 So.2d 764 (LA Ct. App. 1 Cir. 2002)

At page 767: "Mr. James Dupry, qualified as an expert in handwriting analysis and document examination, compared defendant's handwriting sample to the written name and number that the perpetrator left with Ms. Pinion. The comparison was inconclusive, but Mr. Dupry noted that many areas of defendant's handwriting exemplar had traceovers and writeovers, which are characteristics of a disguised handwriting."

COMMENTARY: Some day I will have to do a survey of case reports mentioning characteristics of disguised exemplars. I am beginning to suspect any peculiar feature is a handy excuse for a handwriting analyst to explain an inability to analyze a handwriting. I am at the time in life where I make traceovers and writeovers because my fingers do not always do what I want them to do. In one case I had, the Homeland Security handwriting expert said a writing was disguised because of a list of characteristics. His own writing and signature, and that of his supervisor who signed off on his anemic report, had all the very same alleged characteristics of a disguised writing. I suspected their purported qualification as forensic experts could be a disguise.

As a practical matter, the indicia of falsity, such as alleged characteristics of disguise mentioned above, are only that, indications. They raise suspicion, but no amount of suspicion amounts to proof unless one has an incurable conspiracy phobia. The purported handwriting expert must go on and do something expert about the matter and in an expert way. By obtaining writings by the same person that were made in the ordinary course of social or business life, one could determine whether or not these indicia appear as ordinary features of the person's writing or not. Only if it is proven the indicia of falsity are not characteristic traits of the person's writing, can we then say we have a disguise. More difficult, and seemingly impossible for the vast majority of those acting as handwriting experts, is to determine whether or not the indicia of falsity were made as an artifice or spontaneously. If requested or court ordered exemplars are taken, the expert can observe

the manner of writing directly and, if knowledgeable of the human graphic motor sequence, can determine whether and when a disguise is used.

There are excellent papers in the classical literature of document examination on how to conduct the taking of requested or compelled exemplars. Major among the things to note is the writer's behavior that might quite innocently alter the person's writing style, such as nervousness or conscientious effort to write naturally, which naturally creates unnatural features, and there are techniques to calm the disturbed writer. Maybe the best of these papers is *56 Journal of Criminal Law and Criminology*, "Behavior Factors in Handwriting Identification," 528-539 (Winter 1965), by A. Naftali.

2003

945. *State v Matthews*, 814 So. 2d 619, 2002 La. App. LEXIS 1409 (LA App 2002); remand, 855 So. 2d 740; affirming conviction, 859 So. 2d 863, 2003 LA App LEXIS 3034 (LA Ct Ap 2003); rehearing denied, 2003 La. App. LEXIS 3504; reinstated on rehearing, 2004 La. LEXIS 478 (LA 2004)

2002 La. App. 1409:

Defendant was convicted of both forging a check and uttering the same forged check. Double jeopardy prevented conviction for both, so he chose to have the uttering dismissed and be sentenced on the act of forging. The Court of Appeal said there was insufficient evidence to convict on the act of forging while the other count was dismissed, so he could go free. The dissenting opinion observed that defendant had decided which count to dismiss and which to be sentenced on, so the trial judge should decide which count of forgery the evidence supported. The Louisiana Supreme Court remanded the case, and the decision at 859 So. 2d 863 resulted.

859 So. 2d 863:

In forgery conviction, defendant was convicted at trial and appealed. "The Court of Appeals, 814 So. 2d 619, vacated conviction and sentence. *Certiorari* was granted. The Louisiana Supreme Court, 855 So. 2d 740, remanded." On remand, the Court of Appeals, 859 So. 2d 863, affirmed conviction, ruling among other things that "witness was properly permitted to testify as expert on field of handwriting analysis." At 871-872: "Defendant contends the trial court erred in qualifying Officer Chana Pichon as an expert in handwriting analysis. Defendant argued that handwriting analysis failed to meet the criteria set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*..." Louisiana Supreme Court adopted *Daubert* for determining reliability of scientific evidence in *State v Forest*, 628 So.2d 1113 (LA 1993). The Trial Judge was fully satisfied the criteria had been met, and the Court of Appeals cites *U.S. v Velasquez* as authority on the matter. As to defendant's exemplars, there had been no plain error in admitting them.

COMMENTARY: At page 873 the report gives a quote from the Trial Judge expressing his satisfaction with the admissibility of the handwriting evidence. In paraphrase, he says it is a field of expertise, people have individual styles, and the evidence

is not general knowledge and thus helpful to the jury. One can infer that Pichon did a good job of answering the challenges offered by each *Daubert* criterion.

2004

946. *Fleet Fuel, Inc., v Mynex, Inc., and Singleton*, 877 S2 234, 2004 LA Ap LEXIS 1572 (LA Ap 2004)

COMMENTARY: Robert G. Foley, plaintiff's handwriting expert, concluded one of two questioned signatures on the same document was genuine and the other false.

2005

947. *Joyner v Liprie*, 896 So. 2d 363, 2005 La. App. LEXIS 604 (La. App. 2005)

A key faxed document allegedly sent by Liprie was denied by him. His document examiner demonstrated by means of an overlay that the signature was exactly the same as that on a previous letter from Liprie. The Court of Appeals states that it not only verified this but noted the overlay did not so precisely fit signatures on other unquestioned documents. Joyner had not even referenced the questioned fax until late in the proceedings. Nevertheless, the trial court found the questioned fax to be authentic and expressive of the true intent of the parties. At page [*9] the Court of Appeals states: "The trial court has great discretion in this situation and there is sufficient evidence to support the trial court's credibility determination, which was that the document dated June 22, 1993, was authentic and the truest representation of the agreement between the parties. Thus, even if we disagree, we cannot say that the court's ruling on this issue is manifestly erroneous."

COMMENTARY: This case report leaves one in wonder that a manifestly erroneous finding of fact, the true fact having been verified by the Court of Appeals, could be found to be not manifestly erroneous. It also demonstrates why the finding of fact in a case cannot always be used in itself as evidence whether or not the testifying document examiner is competent.

2007

948. *Eagle Services Corporation v Guerin*, No. 2007 CA 0446 (Ct. App. LA 1 Cir. 2007)

Guerin appealed the finding in Eagle's favor. "Eagle has answered the appeal, seeking an award of expert fees for the appearance and testimonial preparation of Cynthia Rogers, whose expertise is in handwriting analysis." However, "Insofar as the trial court's exclusion of Rogers' testimony [is upheld], we likewise find no abuse of discretion. While Eagle asserts that Rogers' testimony was incorrectly excluded since it constituted impeachment testimony, the record established no inconsistency by Guerin that warranted admission of the expert's testimony. Since Guerin did not deny that the signature on the New Account Acceptance card was hers, she did not testify inconsistently." Additionally,

the judge could compare signatures without an expert.

COMMENTARY: This is included lest someone misunderstand the decision and claim that Rogers was excluded for having been found unreliable. It appears that Rogers had the common experience of showing up to testify only to be sent home.

949. *State v Franklin*, 956 So.2d 823 (LA Ct. App. 2 Cir. 2007)

COMMENTARY: The State presented testimony of an expert in handwriting analysis.

2008

950. *Succession of Joseph W. Merrick, Sr.*, 989 So. 2d 194, 2008 La. App. LEXIS 1018 (La. App. 2008)

At page [*8]: “Appellants called a hand writing expert to testify as to the authenticity of their father’s signature on the will. In the expert’s opinion, Mr. Merrick did not sign the will. Appellants argue that the expert’s opinion should have been accepted by the trial court, especially in light of the fact that Mr. Fisher did not offer any expert testimony to refute their expert’s opinion.

“Mr. Fisher points out that the expert hired by appellants was not aware that Mr. Merrick signed four sets of the will, each set consisting of three pages. The expert admitted on cross-examination that it would have been beneficial for her to have examined all of the documents, and to know the order in which he signed, noting that a person of Mr. Merrick’s age would have tired, thus affecting his signature.”

COMMENTARY: The best way to sabotage one’s own expert witness is to withhold pertinent information.

2009

951. *State v Davis*, 15 So.3d 361 (LA App. 2 Cir. 2009)

At page 567 is the entire statement about the expert evidence: “Robert Foley was called to testify as an expert in forensic document examination and handwriting comparison. He testified that the writer of the known samples (Davis) wrote the letter in question.”

COMMENTARY: A case of routine admissibility, and for Louisiana an almost routine appearance by Foley whenever it is a handwriting case.

2011

952. *Clement, et al., v Estate of Larose, et al.*, No. 2010 CA 1798 (LA Court of App. 1 Cir. 2011)

COMMENTARY: Testimony of a handwriting expert was received.

953. *In re Succession of Barattini*, No. 11-CA-752. (LA Ct. App. 5 Cir. 2012)

“Mary Ann Sherry, a board certified document examiner, examined decedent’s current will, his previous wills and some East Jefferson Hospital releases he signed earlier in 2006. In her opinion, the signature on the November 9, 2006 will was not the same as the other signatures, known to be William Barattini’s signatures, which she examined.” The order to probate an earlier will due to forgery was affirmed.

COMMENTARY: Sherry’s certification is through NADE.

954. *In re Succession of Chiasson*, No. 11-1421 consolidated with 11-1422, 11-1423. (LA Ct. App. 3rd Cir. 2012)

“Next, Jessie and Dolores Faye offered the testimony of Cynthia Rogers, a board certified document examiner, to address the authenticity of Anne’s signature. Faye again objected, adding to the lack of proper pleadings objection the complaint that Ms. Rogers had not been listed as an expert witness on the pre-trial statement filed by Jessie and Dolores and that the authenticity issue had not been raised prior to trial. The trial court rejected Faye’s objection and allowed Ms. Rogers to testify.

“Ms. Rogers’ testimony was to the effect that the mark on the will at issue was not that of Anne. The trial court ultimately relied on Ms. Rogers’ testimony to conclude that the mark on the June 3, 2004 will was not made by Anne.”

Due to legal technicalities it was error for this evidence to have been received, so the finding by the trial court that decedent did not sign the will was reversed.

COMMENTARY: We are left to surmise whether or not plaintiff prevailed on a forged will.

955. *Estate of Robert E. Riggs v Way-Jo, L.L.C.; Kent v The Succession of Robert E. Riggs and Way-Jo, L.L.C.* No. 2011 CA 1651, C/W 2011 CA 1652. (LA Ct. App. 1 Cir. 2012)

“Finally, the Estate presented the testimony of Mary Ann Sherry (Sherry), who was accepted by the trial court as a handwriting expert.[6] According to Sherry, the Estate provided her with Riggs’ will and several medical records from North Oaks, dated from December 22, 1998 to April 13, 1999, that purported to bear Riggs’ genuine signatures for comparison with the signatures of Riggs on the purchase agreement and the February 22, 1999 act of sale. Based on her comparisons, Sherry concluded it was highly probable that the same person signed Riggs’ name on the purchase agreement and the act of sale. However, she opined that neither those signatures, nor the initials made beside the revisions on the act of sale, were made by the same person who signed the will and the medical records. Although Sherry indicated her conclusion was based on other factors in addition to the shakiness of the handwriting on the will and the medical records, she admitted that tremors in a person’s handwriting can come and go.”

COMMENTARY: The Estate won big at trial, but Way-Jo won big upon appeal. In

reversing the trial court, the court of appeals states why it considered the expert evidence against the “great weight of the evidence.” Most reasons listed seem out of the expert’s control, such as the last one: “Nor do we find that the Estate sufficiently established the genuineness of the samples provided to Sherry from Riggs’ North Oaks medical records.”

On a happier note, part of the reversal assured the payment to the handwriting expert: “That portion of the trial court judgment casting the defendants, Way-Jo, L.L.C., John Bankston and Wayne Hagan, with all court costs is hereby reversed, and it is ordered that the Estate of Robert Riggs is to pay all expert witness fees owed to Dr. Ted Hudspeth and Mary Ann Sherry....” Ms. Sherry is a certified member of NADE.

956. *State v Netter*, No. 2011-KA-0908. (LA Ct. App. 4 Cir. 2012)

Mary Ann Sherry testified that defendant had not written certain signatures; however, on cross-examination she testified defendant had written a document he had denied writing.

COMMENTARY: Knowing Ms. Sherry, a certified member of NADE, I am confident she would have informed defense counsel of her entire opinion. Attorneys have to weigh risk/benefit ratios in presenting certain evidence and at times hope opposing counsel stays away from some issues.

2013

957. *Johnson v Pueblo Viejo, Inc., et al.*, No. 47,586-CA (Ct. App. LA 2 Cir. 2013)

“Testimony established that all the Johnsons’ leases required personal guaranties for the performance of the leases. While Andrade admitted his signature, Tabe disputed his. Andrade stated he recognized Tabe’s signature, and handwriting expert Robert Foley positively identified Tabe’s signature on the guarantee. Both Tabe and Andrade were found personally liable for the lease performance.”

Later, one of several points against appellants/defendants is this: “Even though the defendants intentionally or mistakenly omitted briefing their complaint about Robert Foley’s testimony that Tabe signed the personal guaranty, we note that the record clearly shows that defendants were properly notified of Foley’s participation. Plaintiffs supplied defendants documentation of Foley’s examination of and report about Tabe’s signature. Additionally, plaintiffs made Foley available for deposition on a date selected by the defendants, who neither gave notice nor appeared for the deposition. Additionally, they failed to pay Foley’s required pre-deposition fee. The trial court did not err in permitting Foley’s testimony.”

COMMENTARY: Unfortunately, there is no automatic penalty for either the bad manners or poor business practice of renegeing on payment of fees to an expert witness, who must have recourse to court, most often small claims, to attempt collection.

2014

958. *Calvery v Threatt, et al.*, No. 2014 CA 0672 (Ct. App. LA 1 Cir. 2014)

In a suit against two brothers, Calvery called a handwriting expert to authenticate the signature of their deceased mother and his aunt transferring to Calvery her stock in the family business. He prevailed at trial and on appeal, and costs of the handwriting expert were taxed to Defendants.

COMMENTARY: We have the rare delight that the opposing party was made to pay for the unnamed expert.

959. *State v Fletcher*, 149 So. 3d 934 (Ct. App. LA 2 Cir. 2014)

The entire treatment of the evidence received from the handwriting expert is in a footnote:

“[5] Relevant excerpts from this eight-page, handwritten letter are reproduced in the appendix attached to this opinion. The defense stipulated to the report of the state's handwriting expert verifying that the letter was written by defendant. We note that the letter, which was sent from Angola where the defendant was incarcerated, reveals that the defendant writes coherently in a very legible manner.”

COMMENTARY: The letter referred to was written after Defendant had persuaded the court he had remorse for murdering his parents. The letter to a woman in prison stated, among other things, that he wished he had prolonged his parents' suffering and that he wanted to kill his entire family. The sentence was affirmed: “[L]ife imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.”

960. *State v Passaniti*, 144 So.3d 1220 (Ct. App. 2 Cir. LA 2014.)

A lay witness identified Defendant's handwriting on some documents. Another prisoner testified to 20 incriminating statements Defendant allegedly made to her, including her desire to have a handwriting expert so she could demonstrate ability to disguise her handwriting so the expert could not identify her. Robert Foley testified he could not determine whether Defendant had written certain documents because she had disguised the exemplars she had given an investigator.

COMMENTARY: It is amazing how often criminal defendants are said to tell fellow prisoners, whom apparently they never met before, things they would never say to others, such as their attorneys, spouses or mothers. These always seem to be essential evidence that the prosecutor could not otherwise establish. I believe that any criminal defendant or suspect who is being given a good deal should be unqualified to testify against another. Even I am not naive enough to believe that in the circumstances the payoff to the witness is only out of the goodness of the prosecutor's heart and that the testimony is inspired solely by the civic devotion and utter integrity of the witness.

2016

961. *Raine v Raine*, No. 2015-CA-1161 (Ct. App. LA 4 Cir. 2016)

In an action by a mother to collect arrears in child support, the father denied having signed a waiver. He retained Adele Thonn as a handwriting expert. He provided her with only six exemplars, while she provided the weakest opinion she could, that there were indications he had not signed the waiver. The record held ample evidence he had signed.

COMMENTARY: The official statement of the standard terminology for expressing opinions in document examination never says the nine terms are exclusive of each other, leaving open, at least by neglect, the possibility that two or more terms could be legitimately applicable in one case at the same time. This is particularly true that even if a person definitely wrote a disputed signature there could be indications he did not. This provides either an explanation or excuse for disagreements among handwriting experts.

962. *State v Ford*, No. 50,525-CA (Ct. App. LA 2 Cir. 2016)

COMMENTARY: Robert Foley, document examiner, said Defendant signed a pawn slip.

963. *State v Thomas*, No. 15-KA-592 (Ct. App. LA 5 Cir. 2016)

COMMENTARY: Expert Keith Bourque testified to Defendant's signatures to help establish prior convictions.

3. Louisiana Supreme Court.

1996

964. *State v Strickland*, 683 So. 2d 218 (LA 1996)

The appeal alleged inadequate assistance of counsel. As to handwriting expertise, it was resolved this way at page 234: "Since the impact of the state's handwriting expert was minimal in comparison to Atkins' testimony establishing Strickland as the letters' author, the impact of a defense handwriting expert would also have been minimal." Atkins was the woman to whom Strickland wrote. She testified seemingly in depth as to her identification of the source.

COMMENTARY: Instead of a categorical assertion that any defense handwriting expert would be as unimpressive as the prosecution's, why not a tiny bit of speculation that a defense expert just might be very competent and impressively persuasive? There seems to be a rule in criminal appeals that speculation is a major sin in all players but appellate justices defending the prosecution's victory.

1998

965. *State v Cooks*, 720 So.2d 637 (LA 1998)

COMMENTARY: It was proper for document examiner to use as an exemplar a gang affiliation filled out by defendant. The examiner had said that the first exemplar had been deliberately disguised.

2001

966. *State v Marston*, 780 So. 2d 1058, 2001 La. LEXIS 819 (LA 2001)

Detective testified to opinion of a handwriting expert to whom he talked but who did not testify. Defense attorney did not object, thus it was permissible hearsay and helped convict Defendant. The hearsay included the assurance of the opinion:

“After receiving the initial report from North Louisiana Criminalistics, Det. Germain took a proper handwriting exemplar from defendant for comparison with the checks. Both analyses yielded the same result: a strong indication that respondent endorsed the back of the checks. In the hierarchy of likely matches, ‘strong indications’ ranks midway of the seven possible categories ranging from a positive match to probable mismatch.”

The jury had convicted, and the court of appeals had overturned the conviction. The Supreme Court reinstated the conviction because all the evidence, of which the handwriting expert opinion was essential, supported conviction.

COMMENTARY: The case report demonstrates an outstanding degree of ineffective legal assistance. The hearsay testimony about what the document examiner had concluded was highly objectionable and a critical part of the evidence by which defendant was convicted. Also the ineffectiveness included neither objecting to nor arguing against “strong indications” being anything but non-evidence of either elimination or identification of the writer. Anything lying halfway between two extremes is neutral as to either extreme, so indications are no evidence, much less proof, but merely supportive of suspicion at best. Some courts have stated a similar sentiment, and I offer these examples.

Palmer v Blanchard, 113 Me. 380, Ann. Cas. 1917A 809, 94 Atl. 220 (1915)

At 224: “It is common knowledge that wrong dates of instruments are frequently written, erased, and new dates added before the instrument is completed, and there is nothing about this erasure to indicate anything to the contrary. . . .

“ . . . Suspicion is not proof. . . .”

People v Mayo, 194 Cal. App.2d 527, 15 Cal.Rptr. 366, 1961 Cal. App. LEXIS 1845 (CA App. 4 Dist 1961)

Headnotes 1. Falsehood practiced by defendant supports proof of guilt but does not substitute for it. At 370: “While it is true that a wilful falsehood by the defendant on a matter materially connected with the offense charged may produce a strong suspicion of guilt or, under some circumstances, even an admission of guilt, *People v. Osslo*, 50 Cal.2d 75, 93 [4], 323 P.2d 397, it cannot be used to supplant or take the place of an entire lack of

evidence on an essential ingredient of the corpus delicti.”

8. “An inference must be based on probability, not on mere surmise, conjecture, or possibility.” Cites at 371.

Green, et al., v Brantley, et al., 11 S.W.3d 259 (TX Ap Ft. Worth 1999)

An affidavit was described that was properly thorough and contrasted with an opposing affidavit which merely presented “the trial court with a weak surmise or suspicion of a fact, that amounts to ‘no evidence.’”

Merrell Dow Pharmaceuticals, Inc., v Havner, 907 S.W.2d 535 (Ct Ap TX 1995)

At page 548, it is explained that creation of suspicion cannot take the place of a sound scientific basis for an expert opinion. The Court quotes another case report: “[S]ome suspicion linked to other suspicion produces only more suspicion, which is not the same as some evidence.... Our system of justice is designed to ensure that our fundamental right of trial by jury does not become some mere game of chance.... Where there is real evidence, we must uphold the jury verdict, but in a case such as this where there is only real suspicion, we must overturn it.”

Green, et al., v Brantley, et al., 11 S.W.3d 259 (TX Ap Ft. Worth 1999)

At page 268: “The most Appellants did in their response was present the trial court with a weak surmise or suspicion of a fact, that amounts to ‘no evidence.’”

2003

967. *In re Harris*, 847 So. 2d 1185 (LA 2003)

COMMENTARY: Robert Foley, handwriting expert, testified in a disbarment proceeding.

2011

968. *In Re Frank E. Brown*, 68 So. 3d 1023 (LA 2011)

COMMENTARY: In a disciplinary hearing of an attorney, testimony by Robert Foley, a handwriting expert, was received.

2012

969. *In re Lee*, 85 So. 3d 74 (LA 2012)

COMMENTARY: The legal presumption is that a notarized document is not a false document. In my experience it could well be precisely that as not, a presumption. In this case a false document was notarized.

S. MAINE CASES.

1. *Maine Trial Courts.*

I have no case reports for Maine trial courts.

2. *Maine Supreme Judicial Court.*

Officially named The Maine Supreme Judicial Court, it is the highest court in the state and the sole appellate court in Maine.

1994

970. *Board of Overseers of the Bar v Sylvester*, 650 A. 2d 702 (ME Supreme Judicial Court 1994)

At page 703: “Sylvester admitted that he withheld funds from his clients and that he added three words to the notes after they were signed, but insisted that he made these additions during a meeting with his clients. A qualified document examiner testified that five words, ‘Criminal only. Collection separate fee,’ were added by Sylvester with a different pen. The Court concluded that Sylvester made these additions after the meeting with his clients and without their knowledge.”

COMMENTARY: There is no law of nature or society that one can have only one pen available on any single occasion, so there might well have been other evidence.

1996

971. *State v Hager*, 691 A.2d 1191 (ME 1996)

“By an indictment dated September 10, 1993, Hager was charged with theft by deception (Class B) from October 1992 through December 1992. At the trial on this charge the State's handwriting expert [Edward Smith] identified *1193 Hager's signature on thirteen of fourteen copies of receipts for purchases made by the use of Hager's credit card. The receipts, together with the November 12, 1992 statement, were admitted in evidence over Hager's objection. Hager did not testify and offered no evidence in his defense. The jury returned a verdict finding Hager guilty of theft by deception (Class C). From the judgment entered accordingly, Hager appeals.” The objection was based on violation of the law governing admissibility of business records. All was affirmed.

COMMENTARY: No statement was made about the exemplar signatures Smith used, nor did the objection include complaint about use only of copies of the receipts.

2009

972. *Estate of George L. Fournier*, 2009 ME 17, 966 A.2d 885, 2009 Me. LEXIS 16 (ME 2009)

COMMENTARY: The opinion of a handwriting expert was received.

T. MARYLAND CASES.

1. *Maryland Trial Courts.*

I have no case reports for Maryland trial courts.

2. *Maryland Court of Special Appeals.*

2007

973. *Muhammad v State*, 934 A. 2d 1059, 177 Md. App. 188 (MD Court of Special Appeals 2007)

COMMENTARY: The case reporter goes from page 1059 to 1139. To inspire us document examiners with more humility, however the little be that which it is more than, I quote the entirety of references to document expertise, a single instance. But first background: “A handwritten note in the glove compartment [of the Caprice Muhammad had when arrested] included the phrase, ‘Call me God.’”

At page 1176: “A document examiner found ‘writing indentations’ on the car manual found in the glove compartment. The indentations revealed the words ‘Call me God.’” Actually the citation to the case does not belong herein since no expertise in handwriting itself is referenced.

2013

974. *Old Frederick Rd., LLC, et al., v Wiseman*, No. 2356, September Term, 2011 (Ct. Special App. MD 2013)

COMMENTARY: In a fairly complicated construction contract case, a handwriting expert testified to a possible simulation of a signature.

2014

975. *Martin v State*, No. 2413 (Ct. Special App. MD 2014)

“Martin contends that the circuit court erred in sentencing him. The court, he claims, ‘improperly’ considered a letter ‘allegedly’ written by him and then, by imposing a life sentence instead of a sentence within the guidelines applicable to him, which were five to

ten years, ‘effectively sentenced [him] for a crime of which he had been acquitted[.]’”

“The State also introduced, at sentencing, testimony from Diane Lawder, a forensic scientist with the Maryland State Police and an expert in the field of forensic document examination. Having compared the handwriting in the letter and on the envelope with that from a sample of Martin's handwriting, she opined that it was ‘virtually certain’ that the handwriting in the letter belonged to Martin, whereas the handwriting on the envelope did not. Over objection, the State introduced the letter and envelope into evidence.”

“[The Court] did not directly or indirectly suggest that the letter, in any way, influenced the sentence it imposed.”

COMMENTARY: “Virtually certain” might almost certainly be the virtual equivalent of “very or highly probable” in ASTM terminology. It is even more virtually certain that its usage will induce the fact finder to take it as more certain than the witness took it.

2015

976. *Buckingham, et al., v Fisher, et al.*, No. 02416 (Ct. Special App. MD 2015)

“A foreclosure sale was scheduled for December 19, 2013. Richard Buckingham received notice of the foreclosure sale on December 5, 2013. On December 18, 2013, Richard and Susan Buckingham filed a Motion to Stay Sale of Property and Dismiss Foreclosure Action, pursuant to Rule 14-211. They sought a temporary stay of the sale and dismissal of the foreclosure action, challenging the validity of the 1997 deed of trust and the Trustees' right to foreclose. The Buckinghams alleged that their mother, Elizabeth's signature on the 1997 deed of trust was a forgery.

“‘Elizabeth's signatures on the lien instruments attached to the Order to Docket are not hers and are forgeries, thereby rendering the lien instruments void *ab initio* and unenforceable. The Affidavit of John W. Hargett, III, a forensic document examiner, expressing his expert opinion that there is a strong possibility that Elizabeth S. Buckingham did not sign these lien instruments, is attached hereto.’”

COMMENTARY: This case does not belong here because there is neither court testimony nor barring of court testimony by a handwriting expert. I include it to fulfill my avuncular propensities and urge folk to cover in a court pleading all factual and legal elements explicitly and do so even redundantly. The Buckinghams' appeal was denied and the trial court's letting the foreclosure sale stand was upheld for one explicit reason: They had not pled intent to defraud in their assertion of forgery, thus neglecting an essential element in forgery. Why else would someone employ a forgery to gain property belonging to another? Never mind that. State it in your pleading papers that respondents knowingly and nastily gave this evidence of meanly intending to defraud you, along with a careful and explicit list of all other elements of all other legal claims you are making.

At least that is the view from this computer keyboard.

2016

977. *Sypolt v State*, No. 1194 (Court of Special Appeals of Maryland 2016)

COMMENTARY: “The forensic document specialist testified that it was ‘virtually certain’ that it was Sypolt's handwriting on the two checks” that were stolen and negotiated.

3. Maryland Court of Appeal.

1996

978. *Williams v State*, 342 Md. 724, 679 A.2d 1106 (MD Ct App 1996)

At page 1111: “A handwriting expert testified that there were similarities between the handwriting on the note and Williams’ handwriting, but he could not reach an opinion on whether Williams wrote the note.”

COMMENTARY: As noted so often, there necessarily is some similarity with the writing of everyone using the same general penmanship style in the same language. Being employed so often, such sophisticated testimony must be effective in convicting defendants who could otherwise not be.

1998

979. *Argyrou v State*, 709 A. 2d 1194, 349 Md. 587 (MD Ct. App. 1998)

“The expert, Katherine Koppenhaver, having *1197 been qualified as an handwriting expert, testified without equivocation that it was Benner who signed the name of ‘Robert Flens’ on the June 30, 1992 Taylor Rental contract.”

COMMENTARY: In 2015 Ms. Koppenhaver was founder of International Association of Document Examiners.

1999

980. *Reed v Baltimore Life Insurance Company, et al.*, 127 Md. App. 536, 733 A.2d 1106, 1999 Md. App. LEXIS 129

COMMENTARY: The opinion of a handwriting expert was received.

2000

981. *Starke v Starke*, 134 MD Ap 663, 761 A.2d 355, 2000 MD App LEXIS 179 (MD Ap 2000)

At trial the central issue was whether mother, the appellant, had signed her real property over to her son. Katherine Koppenhaver was mother’s handwriting expert witness while the son only called the notary public who notarized the deed. At page *15 the trial

judge is quoted: “I think the expert witness, Ms. Koppenhaver, did the best that she could, but document examination is far, far, far from an exact science when one does not have the original documents and is able, for instance, to run scientific tests on paper and ink and things of that nature.”

The appeal was based on an issue not raised before the trial judge, and the Court of Appeal gives long discussion of it with detailed legal niceties: Was it clear error for the trial judge not to have found a confidential relationship between mother and son though not asked to?

COMMENTARY: One suspects this case is a victim to the pernicious inferences the anti-expert experts promoted. Did the court raise its skepticism of handwriting expertise while the expert was still available to testify and so provide the answer? I testified in a case where the judge listened intently, asked intelligent questions, then dismissed both sides’ handwriting expert testimony as not scientific. He never gave hint of his attitude until making rulings. Also, if as implied the expert in *Starke* was denied access to originals, the ruling simply rewards the party that either disposes of or sequesters an original. The tests the trial judge mentioned are most often irrelevant to the question of authenticity of handwriting and signatures. And there document examiners do themselves as much damage as their critics do, fostering the fallacy that forensic handwriting examination is a secondary, minor skill at best, some examiners even charging clients for every lab test they can perform and seeming to rest their reliability on how much they can pad the fees versus the opposing examiner.

2010

982. *Schultz v Bank of America, N.A.*, 990 A.2d 1078, 413 Md. 15 (Ct. App. MD 2010)

Schultz sued the bank for adding a woman to his deceased father’s checking account signature card and permitting her to withdraw funds from it. At page 1082: “The first witness, a handwriting expert, examined several of Schultz’s known signatures and the signature card that was used to add Holbrook’s name to Schultz’s bank account. He opined that the signature purporting to be Schultz’s on the signature card was not the signature that Schultz used in the normal course of business. He also testified that several checks drawn on Schultz’s account appeared to have been forged with Schultz’s signature.”

The jury found for Schultz, but the court of appeals affirmed the intermediate court of appeals which had reversed the trial court on the basis Schultz had to present expert testimony to explain to the jury the duty of the bank to Schultz both as to ordinary banking standards and as to its contractual obligations to him.

COMMENTARY: First, is there anyone in the country, or maybe even the world, that does not think a bank has an obligation to verify a depositor’s signature on a signature card brought in by a third party who wants to be added to the account but does not bring in the account holder to sign before a bank official? The court of appeals thought this procedure was so complex and so filled with internal and hidden aspects and so far beyond

capacity of ordinary folk to comprehend that an expert was needed. Moral to the story is to bring an expert with you whenever you sue any business or professional entity for any nasty thing they do to you.

In one case an attorney had me compare signatures in a case of similar issues. I suggested asking the bank if it had a manual for its tellers to follow in cashing checks from walk-in third parties against one of its account holders. They did. I reported on every provision that had not been adhered to, and the attorney negotiated a fair settlement. For any business you are in a legal dispute with, ask for every applicable internal policy and procedural document. If they do not have one, that in itself may show neglect by not properly training and educating the staff in dealing with the public or in handling clients' funds. I do not know whether the latter contention, or any contention for that matter, would prevail, but it does not hurt trying every reasonable course of action open to you.

2011

983. *Miller v State*, writ certiorari granted, 409 Md. 413, 975 A.2d 875 (Ct. App. MD 2009); 28 A.3d 675, 421 Md. 609 (Ct App MD 2011)

At page 676: "For the reasons that follow, we hold that neither the Circuit Court nor the Court of Special Appeals erred in their conclusions that the handwriting expert's testimony was admissible. We shall therefore affirm the judgment of the Court of Special Appeals." The handwriting expert was called to prove, or maybe to suggest, defendant signed the murder victim's signature to certain documents. As stated at page 676: "In support of its contention that Petitioner forged the deceased Mr. Convertino's signature on the authorization to charge form, the State presented the testimony and written report of Robert J. Verderamo, a Baltimore City Police Department questioned document expert." Verderamo's expertise was stipulated to.

COMMENTARY: It seems the two principal issues were, one, Verderamo's perplexity whether the murder victim had or had not signed the documents in question, and, two, the balance between the State's right to present handwriting expert evidence and Defendant's right to prior disclosure. The State's right prevailed to present its perplexed expert without prior disclosure.

There is extensive reproduction of testimony, ending with a question by the prosecutor trying to make the opinion somewhat unequivocal, but there still seems to be a slight to enormous hedge in the answer, I guess depending on the distance between the man's lab and the witness chair, if not a gap in mentality:

"[Mr. Verderamo]: The signature on the Chevy Chase, 44J document a little bit tighter, including a middle initial, which the travel document does not have. I see a difference in the crossing of the 'T'. It looks like the finishing of the 'O' comes back to complete a 'T' crossing, so there's—it's just—I mean, I'm not doing a full comparison here but I do see a general appearance difference between here and the Chevy Chase documents.

"[Prosecutor]: To a reasonable degree of scientific certainty?"

“[Mr. Verderamo]: For being on the witness stand and not being in my laboratory, yes.”

Still there was no abuse in letting it go to the jury, but then expertise is not necessarily a requirement for prosecution experts, especially if a defense attorney stipulates away the basis for his objection: ineptitude masquerading as expertise.

U. MASSACHUSETTS CASES.

1. Massachusetts trial courts.

2000

984. *Fleet Finance, Inc. v Sammarco and Sammarco*, 8 LCR 410, 2000 Mass. LCR LEXIS 48 (Mass. Land Court, 2000)

“The following witnesses testified at trial: Patricia; Jean Caya Bancroft, FFI’s handwriting expert; and Alan T. Robillard, Patricia’s handwriting expert.” The judge, confronted with contrary expert opinions, said Patricia had not signed the document.

COMMENTARY: It does not seem that the judge accepted either expert’s evidence, but went on his own comparison of Patricia’s signature and other evidence in the case.

2003

985. *Commonwealth v Glyman, et al.*, 17 Mass. L. Rep. 146, 2003 Mass. Super. LEXIS 431 (Superior Court, Worcester, 2003)

Charged with falsification of a will, defendants moved for an *in limine* hearing to bar handwriting testimony “on ground that its reliability is not sufficiently established to meet the test of *Commonwealth v. Lanigan*, 419 Mass. 15 (1994) based on *Daubert v. Merrell Dow Pharmaceutical*.... For the reasons that will be explained, the defendants’ motion will be denied.” The Court reviewed cases pre- and post-*Daubert*. The decision is based on filings by the parties, since these stated all that would have been stated in a hearing. Saks was *in limine* motion expert for defendant and Kam for Commonwealth; John Breslin of US Postal Inspection Service was proffered trial expert for the Commonwealth. The decision enumerates Saks’ three theories and explains why they are incorrect or of no moment. Some footnotes give a precise critique, and so they are reproduced here verbatim:

(1) In *United States v Mooney*, 315 F. 3d at 62-63, the First Circuit affirmed the ruling of another judge in the Circuit who had considered the reasoning of *Hines* and declined to apply the same limitation.

(2) Professor Saks’ affidavit refers to these two decisions [*Hines* and *Starzecpyzel*] by name, but does not give their citations, and does not acknowledge that their holdings are contrary to the position he advocates. Such omissions are surprising in a submission from a

law professor.

(3) Professor Saks himself is a professor of law and psychology at Arizona State University, with ‘doctoral training in experimental social psychology,’ with emphasis on ‘research methodology and statistical analysis.’ He has published articles in law journals, a legal treatise, and one article in the *Journal of Forensic Science*. It does not appear that he has published any empirical research of his own on any subject, or that he has published anything in the area of research design or methodology.

(4) The Court has disregarded those portions of Professor Saks’ affidavit that consist of argument and advocacy, as distinct from fact and opinions on matters of fact.

(5) Professor Saks draws an analogy to the field of DNA typing, in which experts do not claim uniqueness, but refer to the probability of coincidental similarity. The analogy seems less than fully apt, in that DNA involves a finite number of physical components, thus lending itself to calculation of probability, while handwriting is more in the nature of behavior, subject to virtually infinite variation.

(6) Professor Kam’s affidavit points out that certain of the studies on which Professor Saks relies have not been published in any peer reviewed publication.

(7) Professor Saks draws particular attention to variation in proficiency when the author is a teenager and when the sample is hand printed, and to bias arising from the examiner knowing the result desired or expected by investigators. This case does not involve teenagers. Although one of the entries on which Mr. Breslin opines is hand printed, the issue of ultimate significance in the case is the authorship of signatures. Although Professor Saks asserts that ‘In the present case . . . it appears that the examiner had been informed who the suspect was,’ nothing in the materials before the Court supports that assertion.

(8) Professor Saks criticizes Professor Kam’s research on the theory that the results may have been skewed by different financial incentives affecting lay participants and professional examiners. Professor Kam has tested and refuted that theory, and has published the results of his test in a peer reviewed journal.

COMMENTARY: This is an excellent court decision giving the exact analysis that Saks and his like are wont to complain that courts do not give when disagreeing with them. I strongly recommend you acquire this complete text for your reference and study. The Court gives several of the very criticisms I have given, but much more succinctly and crisply. Regarding each footnote given above:

(1) Saks and his kind often reference nonprecedential cases as if they should at least shame the next court into agreeing with them. Note well that cases from higher courts setting law are only binding on their own lower courts, which even then might be able to distinguish or otherwise find good reason not to follow them in the instant case. Yet these professors of law in their non-expert roles will quote courts from foreign jurisdictions as if they set precedent.

(2) In *Glyman*, Saks was arguing for total exclusion. This note nicely sets forth skills as an academic, if not lawyerly, illusionist. Depending on the thesis for a particular case,

these two cases are fully cited and touted even to the Heavenly Court. So check out every single citation these kinds of witnesses and litigants throw against you.

(3) Note that he, who excoriates others for publishing empirical research not to his *post factum* approval, should excoriate himself even more out of academic and evidential consistency.

(4) In ethical codes of all forensic organizations which I have seen, legal advocacy in an expert witness is unethical. If you are faced with such a witness, impeach at trial on basis of codes of ethics and afterwards formally complain to any professional organization the witness belongs to.

(5) This is a most astute observation which is a key to explaining the type of science handwriting comparison is. However, due to the narrow-minded and unscientific definition given to “science” by many alleged scientists and by the *Daubert* Court itself, what would remain residually science can have no scientific foundations, an argument I have made elsewhere.

(6) Touche!

(7) Similar to improper use of case law, as to its misreading, its application in other jurisdictions, and the ignoring of it when relevant though inconvenient, they use inapplicable publications. Check absolutely everything such opponents claim supports their position, then research in all fields studying handwriting for applicable papers.

(8) Some courts side with Saks on the issue of refutation and others side with Kam. But what is there to choose between two witnesses who both misunderstand the graphic motor movement and what can make it individualistic? One thing only: Kam at least does hard work in support of his misconceptions while Saks merely repeats the same misconceptions and asserting that all contrary evidence has some human flaw in it, never mind that his human flaws are far more numerous and dangerous in that they make it a rule of law that forgers have a legal right to the fruits of their forgery since no one has a legal right to bring contrary expert evidence. That indeed is the practical bottom line of the anti-expert experts’ theory.

986. *United Rug Auctioneers, Inc. v Arsalen, et al.*, 16 Mass. L. Rep. 420, 2003 Mass. Super. LEXIS 189 (Superior Ct. Middlesex MA 2003); motion on fees, 16 Mass. L. Rep. 607, 2003 Mass. Super. LEXIS 245

The entire paragraph where the trial judge discusses the handwriting issue is reproduced because it illustrates how judges weigh contrary evidence and different kinds of evidence from different sources.

“Concerning defendants’ counterclaim, all counts must fail because plaintiff has persuaded me of the main pillars of its lawsuit. Of course, if I were persuaded that United’s claim was based on a forged document, the case would stand on different footing. I am satisfied, however, that Arsalen’s agreement, Exhibit 2 is genuine. Two witnesses (Ronen Drory, Kim Bevins) testified that they observed Arsalen sign the document. The two handwriting experts who testified, Ms. Nugent for the plaintiff and Mr. Rice for the

defendants, reached opposite conclusions. Rice said Bevins' and Arsalen's signatures are forged; Nugent opined that they are genuine. Each expert made a good impression and articulated plausible reasons for his/her opinions. Mr. Rice has somewhat more impressive credentials than Ms. Nugent, having participated in several high profile investigations. Handwriting analysis is, however, imprecise and not guided by uniform, widely accepted [*19] objective standards. There is a fair amount of 'ipse dixit' in each expert's testimony. For instance, in concluding that Arsalen's signature on Exhibit 2 was forged, Mr. Rice points to numerous 'stops' of the pen in the final loop that distinguishes Arsalen's signature. These 'stops' are based on wavy lines, or 'ink blots,' that appear throughout; yet, as plaintiff's counsel points out, the signature *line* itself is 'wavy.' Thus these features may be nothing more than artifacts of the paper rather than proof of a slowly manufactured, forged, signature. Although both experts were well prepared and helpful in some respects, neither experts' testimony engenders in me sufficient confidence to base a conclusion. Ultimately, with the humble acknowledgment that historical truth is often difficult to determine, I base my conclusion that exhibit 2 was not forged, either with respect to Bevins' or Arsalen's signature, upon Ms. Bevins' testimony. She is a part-time secretary earning \$ 15,000 per year for United. Her husband, Mr. Isakof, works for United. Potentially these employment relationships might bias her in favor of United, and this could have affected her testimony, but I find it hard [*20] to accept that she would come into court and flatly perjure herself, subjecting herself to possible criminal penalties, on a subject which, to a layperson at least, might be determinable by handwriting analysis. If she were willing to take that rather drastic step, it would seem more plausible simply for her to notarize the fictitious signature in the first place." [Emphasis in original.]

COMMENTARY: At least 12 years ago Mr. Rice had a very impressive CV. It said he had studied with a friend of mine and myself, while neither of us had any record of such study. It said he had worked on the Hitler Diary case, though somehow all reports, journal papers and books I have seen on the matter failed to mention him. His claimed years of study/training and experience in questioned documents added up to well beyond 100. At one time an attorney claiming to represent Mr. Rice threatened to sue me for defaming the man. When I finally said go ahead and sue since, among other things, I would then have discovery of him, I received a letter thanking me for my apology. Which is more than enough said.

In the second report, 16 Mass. L. Rep. 607, 2003 Mass. Super. LEXIS 245, the judge allowed reasonable attorney and expert witness fees to plaintiff.

2006

987. *Montgomery, et al., v Jackson, et al.*, and related case, 14 LCR 661, 2006 Mass. LCR LEXIS 134 (Massachusetts Land Court, 2006)

"The Defendants also made a Motion to Preclude Testimony of Richard Christopher, the Plaintiff's expert handwriting witness, based on his alleged lack of qualifications and

because he was not properly identified as an expert prior to trial. The court (Trombly, J.) allowed the Motion. On the second day of trial, the Plaintiffs filed [*6] and argued a Motion to Reconsider the Allowance of the Motion to Preclude Testimony of Richard Christopher. The court denied the Motion. Plaintiffs then made a Motion to Preclude Testimony of Defendants expert witness, Alan Robillard, and filed a Motion for a Mistrial. Both Motions were argued and denied.”

“13. The Defendants’ expert witness, Alan T. Robillard, testified that Anita’s signature on the deed was ‘more likely than not’ valid. He testified that there are five forms of forgery--Mechanical fabrication, Freehand, Traced, Simulated, and Auto--and that Anita’s signature did not contain characteristics of any of these types of forgeries. Robillard, however, was unable to conclude that the signature was *definitely* not a forgery because the sample on which he based his opinion was a photocopy, and he prefers to work from original instruments.”

The transcript of Christopher’s deposition was allowed to be marked as an exhibit. The judge said that even if Christopher had been allowed so to testify at trial, the ruling would still have been that the signature was valid.

COMMENTARY: The brief description of Robillard’s testimony shows excellent understanding of the terminology and techniques in handwriting identification. The plaintiffs had originally identified a handwriting expert named Christine Cusack.

The case report is of interest for other issues that are treated, such as lay opinion as to handwriting and how undue influence invalidated a deed.

2007

988. *Baghdady v Baghdady*, 2007 Mass. Super. LEXIS 145 (Superior Court, Middlesex, 2007)

COMMENTARY: Ron Rice, defendant’s handwriting expert, testified.

2008

989. *Hobson v Hobson, et al.*, 16 LCR 104, 2008 Mass. LCR LEXIS 10 (Mass. Land Court 2008)

At page [*5] it is stated that Richard Fraser, M.D., was offered as a handwriting expert by plaintiff. However, later it is stated: “Defendants also rely heavily on the testimony of Richard Frasier, M.D. (‘Dr. Frasier’), whom they offered as a handwriting expert at trial and who testified that the signature appearing [*16] on the 1995 Deed is not a forgery.”

The court found that the signature in question was not a forgery, but asserted: “While defendants offered [*27] Dr. Fraser as their handwriting expert, the court does not credit his testimony due to his questionable training and lack of memberships in and certifications by reputable associations, normally standard for a person purporting to be a handwriting

expert.”

COMMENTARY: The trial judge seemed to go out of his way to make clear that the finding that the signature was not a forgery was not based on the expert’s testimony, though that was the opinion of the expert. Both spellings of the expert’s name are used in the case report. His web site has “Fraser” and notes that he studied under Ron Rice, who, contrary to what his CV once said, did not study under me during his once-claimed more than 100 years of study and experience.

2009

990. *McGeoghean, et al., v McGeoghean, et al.*, 25 Mass. L. Rep. 528, 2009 Mass. Super. LEXIS 147 (Superior Court, Middlesex, 2009)

“Defendants’ handwriting expert, moreover, while disputing the authenticity of Sarah’s signature on the deed and on her POA to Aaron Heesch, admitted that his opinion as to her signature’s having been forged on those documents, was only ‘tentative,’ and that he could render a definitive opinion only if he had been provided with her original signatures on the contested documents, which he was not. Accordingly, the Court finds that not only did the conveyance to John unquestionably fulfill Sarah’s intentions, but that, in all of the circumstances, defendants have failed to sustain their burden of proof regarding the alleged forgery of Sarah’s signatures on the POA to Heesch and [*22] on the deed.”

COMMENTARY: Once more the failure of the clients or attorneys to supply proper materials embarrasses their expert.

2. Massachusetts Courts of Appeal.

1994

991. *O’Connell v Bank of Boston*, 640 NE 2d 513 (MA App. Ct. 1994)

COMMENTARY: Testimony of a handwriting expert was received.

1997

992. *Keville v McKeever*, 42 Mass. App. Ct. 140 (MA App. Ct. 1997)

COMMENTARY: Opinion of handwriting expert, Joan McCann, was received, and complaint on appeal of the exemplars she used was rejected.

2002

993. *The Cadle Company v Vargas*, 55 Mass. App. Ct. 361, 771 N.E.2d 179, 2002 Mass. App. LEXIS 860 (Mass. App. 2002)

“[*3] 2 The defendant acknowledged that she had from time to time signed papers

that Newfield brought home, but she had no specific recollection about the 1985 paper. She assumed the signature was hers (the line for signature by ‘witness’ was left blank). The plaintiff improved on the point (needlessly) by the testimony of a handwriting expert.”

COMMENTARY: The Court of Appeals might well think the expert testimony to be needless, but at times the needless is most necessary. I was not called by an attorney because the signature on a purported promissory note, existing only in a poor fax, was so lacking in any resemblance to an authentic signature that the attorney said no one could possibly find it genuine. The judge did. Upon a motion for reconsideration the new attorney had me prepare a very detailed declaration under oath. The client later told me that at the hearing on the motion the judge informed the plaintiff that he believed nothing the plaintiff had told the court and that the plaintiff would one day receive what he deserved. Then the judge said that the motion for reconsideration was denied, defendant must pay on the promissory note. I suspect many document examiners can recount a similar tale.

2003

994. *Commonwealth v Murphy*, 59 MA App Ct 571, 797N.E. 2 394, 2003 MA App LEXIS 1096 (Mass. App. 2003); review denied, 440 Mass. 1109, 801 N.E.2d 802, 2003 Mass. LEXIS 927 (2003)

In an identity theft case, defendant argued on appeal that the trial judge erred in admitting testimony of handwriting expert, Nancy McCann. Objection and motion to strike were made the day following lengthy cross-examination, and so they were not timely. There had been no motion for pretrial hearing on scientific reliability. Thus the Court of Appeals defers to the trial judge’s exercise of discretion. Nevertheless, at page 399 it is stated: “We conclude that, as the courts in Massachusetts have long accepted as reliable expert testimony about the authorship of handwriting, a *Lanigan* hearing was not necessary even had one properly been requested.”

COMMENTARY: At least in Massachusetts rationality reigns as to the admissibility of the admissible.

2005

995. *Commonwealth v Martin*, 63 Mass. App. Ct. 587, 827 N.E.2d 1263, 2005 Mass. App. LEXIS 489 (Mass. App. 2005)

COMMENTARY: A handwriting expert called by the Commonwealth testified.

2014

996. *Commonwealth v Gianatasio*, No. 13-P-1288 (Ct. App. MA 2014)

A handwriting expert testified that payor’s signature on two checks was genuine but on two others was false. Defendant’s conviction for uttering the latter two checks was

affirmed, while he was acquitted regarding the former two.

COMMENTARY: It is not said which party called the expert, who was quite impartial, giving equal benefit of the expertise in handwriting to both sides.

3. Massachusetts Supreme Judicial Court.

2000

997. *Commonwealth v Harwood*, 432 Mass. 290, 733 N.E.2d 547, 2000 Mass. LEXIS 425 (Mass. 2000)

“We consider whether it was abuse of discretion for a judge to suppress the testimony of a Commonwealth witness as a remedy for a missing file containing documents that the defendant asserts were exculpatory.” Defendant claimed a key witness against him lied to the Grand Jury when denying he had signed a certain letter which was now lost. Defendant claimed a handwriting analysis would have proved the signature genuine. The Trial Judge suppressed the witness’ testimony at trial. When the original file was reported missing, “the judge allowed a motion *in limine* permitting the Commonwealth to use copies in place of the missing originals. The defendant’s document examiners reported, however, that ‘[b]ased upon the quality of the photocopied signature examined, authorship of the “[Leif] Mikkelsen” signature [on the February 5 letter] cannot be determined at this time. An examination of the original document would establish a more conclusive opinion.’” The Commonwealth’s document examiner, Barbara Harding, also testified that the original was preferable. The Commonwealth had not submitted the February 5 letter to Harding for analysis. Suppression of the testimony was affirmed.

COMMENTARY: One can say by way of inference that, if the Supreme Judicial Court had not considered handwriting comparison reliable, its ruling would have been most unreasonable and badly founded. At the very least, the expertise is clearly admissible in Massachusetts in the post-*Daubert* era. Ms. Harding is a member of NADE.

2003

998. *Commonwealth v Caputo*, 439 Mass. 153, 786 N.E.2d 352, 2003 Mass. LEXIS 269 (Mass. 2003)

The parties stipulated that defendant had filled out an insurance application in his favor bearing his estranged wife’s signature. A handwriting expert testified that the date and signature were not in the wife’s hand. Conviction of defendant for murdering her and her mother was affirmed. The trial judge had properly denied a motion to suppress all documents used by the expert.

COMMENTARY: If a physical were required by the insurance company, the husband would have to engage a stand-in. Today a digital photo added to the file would assure later identification of a stand-in and ultimately be more reliable evidence of identity

than such things as a potentially falsified drivers licence.

2006

999. *Commonwealth v Weichell*, 446 Mass. 785, 847 N.E.2d 1080, 2006 Mass. LEXIS 321 (Mass. 2006)

COMMENTARY: The trial judge admitted and adopted the defense handwriting expert's identification of the writer of a letter..

2008

1000. *Commonwealth v Dubois*, 451 Mass. 20, 883 N.E.2d 276, 2008 Mass. LEXIS 206 (Mass. 2008)

It was not error to permit a handwriting expert to decipher reverse writing by defendant. Likewise, it was not error to deny payment by the Commonwealth for the defense's handwriting expert used to support a motion for a new trial.

COMMENTARY: Cases such as these are valuable for supporting the admissibility of specialized skills in handwriting expertise. However, I would think that the particular expert's competence in the special skill would have to be established to the satisfaction of the trial judge.

V. MICHIGAN CASES.

1. Michigan Trial Courts.

I have no case reports for Michigan trial courts.

2. Michigan Courts of Appeal.

1996

1001. *In re Lavech*, 1996 MI App LEXIS 1673 (MI Ct Ap 1996)

Marie Lavech, deceased, left an unsigned 1973 will and a signed 1981 will. Appellant claimed the 1981 was forged. Leonard A. Speckin was appellant's expert and Robert Haskins was appellee's. Haskins testified he used graphology to determine that the 1981 will bore a genuine signature. No objection was entered at trial to his methods, nor apparently was a *Davis-Frye* hearing requested. Thus error was not preserved for appeal. Such hearings require court and counsel to evaluate fields they have no expertise in, "nevertheless, the threshold task of framing the issues is assigned to counsel." Michigan's Appeal and Supreme Courts had not ruled on whether graphology was a recognized field.

COMMENTARY: One cannot draw conclusions from the decision, since the Court

of Appeals carefully notes the issues involved were not preserved for appeal. Surely, neither party was challenging the admissibility of expert handwriting testimony, while appellant was challenging only one approach, but did so only on appeal and not properly at trial. Experts should take responsibility to offer the attorney/client intelligent and objective support for challenges to what they consider to be unreliable, opposing expert evidence, but they should adhere to the ethical practice of avoiding personal attacks.

2002

1002. *In re Estate of Moore. Kuerbitz v Ballou*, 2002 Mich. App. LEXIS 1532 (Mich App. 2002)

“The trier of fact is in the best position to determine the proper weight to afford a handwriting expert’s testimony. *In re Skoog Estate*, 373 Mich. 27, 29; 127 N.W.2d 888 (1964); *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich. App. 309, 323; 575 N.W.2d 324 (1998). In the instant case, the expert witness testified decisively that in his opinion the signatures [*7] were forged. While he opined that pain or writing with an off-hand could make writing larger and more spaced out, he maintained that it would not change the basic letter formation. The expert witness further noted that there was a consistent tremor and several blunt stops in the will signatures that indicated forgery. Respondent did not present any expert testimony to refute these claims. Accordingly, the trial court did not clearly err when it held that the will signatures were forged.”

COMMENTARY: Apparently the expert recognized the difference between fine, or health, tremor and gross, or muscle, tremor, as well as between pauses to calculate the next stroke and those from either pain or deficient energy.

1003. *People v Kissinger*, 2002 Mich App LEXIS 1336 (Ct Ap MI 2002)

In a post-conviction motion defendant offered expert handwriting evidence, the nature of which is not indicated. Trial Court held it was only cumulative of evidence that had been presented at trial and thus irrelevant. This holding was not error.

COMMENTARY: This is a good example of the rule that expert evidence must first be shown to be relevant, and, if the evidence is not relevant, reliability is a moot question.

2003

1004. *Department of Consumer & Industry Services, dba Board of Pharmacy, dba Disciplinary Subcommittee, v Sobh*, 2003 Mich App. LEXIS 2367

Todd Welch’s testimony that respondent’s signatures on test center logs were simulations was more credible than Rita Lord’s to the contrary.

COMMENTARY: Statements critical of Lord’s examination are suspect in themselves. The decision more than suggests that Lord was hoodwinked by her own client. For example, some known signatures had been represented to her as the questioned.

Nonsense was offered that she was ineligible for certification by American Board of Forensic Document Examiners (ABFDE), without further stating the prejudicial and partisan nature of some requirements. It is asserted that ABFDE is “the only certifying organization recognized by the” American Academy of Forensic Sciences, which is to say they only recognize themselves, and that is hardly a commendation for anybody. Ms. Lord, who was a personal friend of mine, is deceased.

I met Mr. Welch at a meeting of another organization where the members were ignoring visitors. Mr. Welch went out of his way to speak to the rest of us in a most courteous and professional manner.

1005. *Munger v McDonald*, 2003 Mich. App. LEXIS 1064 (Mich. App. 2003)

COMMENTARY: In a dispute over a quitclaim deed the court heard testimony from handwriting experts for both sides.

1006. *Phillips v Rahal, et al.*, 2003 Mich. App. LEXIS 2480

COMMENTARY: Lay and expert testimony that the signature in question was false with notary’s testimony established forgery by clear and convincing evidence.

1007. *Webb v Greer, et al.*, 2003 Mich. App. LEXIS 1721 (Mich. App. 2003)

COMMENTARY: A handwriting expert testified that a decedent’s signatures on quitclaim deeds were written by someone else.

2004

1008. *In re Estate of John Ronald Werner. Watkins v Estate of Werner*, 2004 Mich. App. LEXIS 1597 (Mich. App. 2004)

“We do not have a firm and definite conviction [*2] that the probate court made a mistake in effectively concluding that Werner’s purported signature on the alleged promissory note was a forgery and, accordingly, holding that appellant did not establish his claim by a preponderance of the evidence. The probate court’s finding was strongly supported by reasonable considerations in the record. The probate court reasonably viewed the testimony of appellant’s handwriting expert as amounting to little more than a conclusion that Werner provided the disputed signature because of the similarity of the style of writing of the disputed signature to samples of Werner’s signature. However, as the probate court indicated, this does little or nothing to exclude the possibility that the signature was traced. Rather, the testimony of appellee’s handwriting expert strongly supports a conclusion that the signature was traced or drawn in an effort to fabricate Werner’s signature. The analysis of appellee’s expert finding that signatures by Werner on other documents did not show stopping and starting of the pen as in the disputed signature tends to call into question appellant’s expert’s attribution of this to Werner’s age and possible health problems. [*3] In addition, the probate court reasonably viewed appellee’s

handwriting expert as having superior qualifications in light of his testimony describing his training and experience in his work for the state police.”

COMMENTARY: Appellant’s handwriting expert made the mistake often made. Just because indicia of false writing resemble indicators of age or illness, they are attributed to same to support a finding of authenticity. On the other hand, for the same reason they are attributed to forgery to support a finding of falsity. Appellee’s handwriting expert did the expert thing by verifying whether these indicators appeared in the exemplar signatures. If they do, they are likely evidence of genuineness, if not, as here, they are evidence of falsity. They cannot be correctly interpreted in isolation from the field of exemplars.

2005

1009. *People v Riggins*, 2005 Mich. App. LEXIS 769 (Mich. App. 2005)

“In addition, in order to help defendant, defense counsel introduced a letter purportedly written by codefendant admitting his guilt in the crime. After codefendant’s counsel called a handwriting expert, the jury learned that the writing in the letter did not match [*6] codefendant’s handwriting, but matched the writing of defendant’s mother.”

COMMENTARY: I wonder if mother was prosecuted for forgery and obstruction of justice by fabricating false evidence.

2007

1010. *In re Estate of Bessie Pearl Jones. Wilson v Oliver*, 2007 Mich. App. LEXIS 204 (Mich. App. 2007)

COMMENTARY: Wilson’s expert said Jones’ signature on a quitclaim deed was forged, while Oliver’s expert was inconclusive, requesting more exemplars.

1011. *The Estate of Miljan, et al., v Jedick, et al.*, 2007 Mich. App. LEXIS 1963 (Mich. App. 2007)

“And, of critical importance, the court clearly found the testimony of defendants’ handwriting expert, who was much more credentialed and experienced, [*5] more credible than the testimony of plaintiffs’ handwriting expert.”

COMMENTARY: Until it is forbidden to consider qualifications and credentials as evidence of the expert fact in dispute, con artists will continue to be given engraved invitations to run their forensic con games.

1012. *People v Graham*, 2007 Mich. App. LEXIS 810 (Mich. App. 2007)

The court properly permitted the prosecutor to add a handwriting expert to his list of witnesses since he had waited to see if defendant would plead. “Defendant also argues that the trial court abused its discretion by allowing Ruth Holmes, the prosecutor’s handwriting expert, to testify at trial without evaluating whether her testimony was reliable or would

assist the trier of fact.” Since defense made no challenge to Holmes, no specific enquiry by the court was required.

“At trial, Holmes explained the methodology she used to evaluate the documents. Holmes used various forms of magnifiers to analyze individual letter formations. She scanned the documents so that they could be analyzed on a computer, using different measuring devices to evaluate whether the same person wrote them. She found a number of common characteristics in the documents, which were explained in her testimony. She conceded, however, when cross-examined by defense counsel, that there were some dissimilarities, but they did not alter her opinion that each document was written by the same person, with the highest level of certainty for an expert in her field.

“Because the primary role of a handwriting expert is to draw the jury’s attention to similarities between a known handwriting sample and a contested writing [citation omitted], and there is nothing in the record to indicate that Holmes used an unreliable [*19] method to identify similarities between the four documents, we conclude that defendant has not established that the admission of Holmes’s handwriting analysis constituted plain error.”

COMMENTARY: Ruth Holmes is a certified member of National Association of Document Examiners.

1013. *People v Leiterman*, 2007 Mich. App. LEXIS 1784 (Mich. App. 2007)

At page [*4]: “Also, at defendant’s trial, handwriting expert Thomas Riley testified on behalf of the prosecution that after comparing the words ‘Mixer’ and ‘Muskegon,’ which were found written on the cover of a phonebook seized from the basement of the law school library by investigators in 1969, with several known samples of defendant’s handwriting, he believed it to be ‘highly probable’ that defendant wrote the words on the phonebook cover.” This helped put defendant in the area where Ms. Mixer, a law student, had been sexually abused and murdered 30 years previously.

An extensive discussion of admissibility of expert handwriting testimony concludes: “Nor do we find that counsel was ineffective for having failed to object to the testimony of the prosecution’s handwriting expert, Thomas Riley, as misleading for having been based on (1) a photograph of the questioned document, [*28] as opposed to the original, and (2) an analysis that ignored certain aspects of defendant’s known writings. Even had such an objection been made, such matters affect the weight to be accorded Riley’s opinion by the jury, rather than its admissibility. Moreover, the limitations associated with analysis of a photograph and the appropriateness of Riley’s analysis were sufficiently challenged at trial by defense handwriting expert Robert Kullman.”

COMMENTARY: One would like to know the compelling evidence that supported a “highly probable” finding from comparison with two non-original words.

1014. *Fair, et al., v Moody, et al.*, No. 278906 (Ct. App. MI 2008)

After Plaintiffs testified in a bench trial, “The trial court also heard from plaintiffs' handwriting expert, Michael Sinke, who testified that his analysis positively eliminated plaintiffs as authoring the signatures on the closing documents. LaSalle's handwriting expert, Todd Welch, testified that he could not come to a conclusion one way or the other following his analysis.”

COMMENTARY: With that one would assume Welch had nothing to offer, since any offering would hopefully result from observations interpreted by established theory, and logically thus be a conclusion. So many other case reports say an expert had no conclusion or opinion, an opinion being a conclusion the expert witness is willing to state as true under penalty of perjury. How many times have I stated herein my perplexity as to why the witness was called, having no opinion or conclusion to offer? Maybe this case gives us the answer: The case report is not correctly reporting the case of the witness's testimony.

Immediately following the above quote is this:

“Both experts compared known exemplars against the signatures on the closing documents. For the most part, the signatures at issue looked nothing like the exemplars, and the ‘n’ at the end of Mr. Fair's first name [Darwyn] was missing on all of the challenged signatures, while being included on all of the exemplars. Both experts noted that, while their [sic] was some fluency in Mrs. Fair's exemplars and her purported signatures, the signatures on the documents at issue showed signs of many stops and starts, hesitation, slowness, pen lifts, and blunt beginning and ending strokes. This would be typical of a simulated forgery, i.e., one in which the forger from memory or observation tries to recreate the signature so that it appears similar to a true signature. Welch opined that the challenged signatures showed clear signs of simulated forgeries, given the stops and starts, slowness, and pen lifts, but the problem was that they looked nothing like the exemplars. Although Welch's analysis was inconclusive, he opined that the signatures at issue lent themselves to being disguised or auto forgeries, i.e., an attempt by a person to sign his or her name in a style different than normal so that the signature could be disavowed later. Sinke disagreed that these were disguised or auto forgeries.”

Everything Welch “opined” was a conclusion from his observations, interpretations, and evaluation as to its correctness and assurance, a conclusion he adopted as his professional opinion he was willing to testify to under penalty of perjury. So why did the court say his opinion was inconclusive? Because, I offer as the critical factor in the court's mind, he did not give intellectual “comfort food” to the judicial mind by saying in effect: “Be at peace knowing you can safely say this signature is disguised. No need to grasp why I say it is disguised, just that I say so, as very assuredly so, and so you can be very sure so.” Maybe that is why judges so often do the irrational thing of accepting falsity or genuineness on the say-so of the witness (who is credited with being old enough, arrogant enough, demeaning enough towards another expert, having had more than enough opportunity to

learn the discipline (however unlearned one might have ended up), with quite enough prestigious paper hung on the office wall and listed on the CV, and more than enough of other impressive bragging points to spout during the toughest and most lengthy voir dire.

The outcome? The first sentence says: “Plaintiffs appeal as of right the judgment entered by the trial court following a bench trial in this case arising out of a nefarious real estate transaction orchestrated by various defendants, and allegedly plaintiffs, on August 19, 2004.” The seemingly nefarious Plaintiffs still owed the seemingly nefarious Defendant mortgage holder full payment on the seemingly nefarious mortgage minus an extra the trial court had tacked on.

The effect of the two experts? Maybe Sinke’s conclusiveness persuaded, and Welch’s inconclusiveness nudged, the trial court to the conclusion: “The trial court found that the warranty deed and closing documents had been forged, and it struck those documents. When a deed is forged, those ostensibly acquiring an interest under the forged deed, even innocently, are in no better position with respect to title than if the acquisition of the interest was with notice of the forgery.”

I endeavor to avoid what is pedantic, but this, if it be a pedantry, is one of those rarely noble pedertries. Let us all use the subjunctive for hypothetical facts and reserve the indicative for actual facts: “...if the acquisition of the interest were with notice of forgery.”

A final note on a now common misuse of the Queen’s English as if long established words did not have the meaning they always had till some misbegotten genius invented an irrational meaning for a perfectly rational term. “Auto forgeries” is an undesirable term, to state it diplomatically. How can one forge oneself, which is what it means literally? It is nothing but a disguise, since it is a deliberate distortion of one’s handwriting or signature to make it look as if someone else wrote it. How such a silly and useless term ever gained currency is a mystery. I may not suggest that the mystery is solved if we assume the person who made it up was silly and useless; though, if you were to suggest this solution, I would not argue with you.

1015. *People v Bryant*, 2008 Mich. App. LEXIS 472 (Mich. App. 2008)

Defendant was convicted of “first-degree criminal sexual conduct,” aggravated stalking, and assault and battery. He had a string of attorneys, one of whom believed him when he said he had not written anonymous letters to his victim. The attorney obtained a handwriting expert to prove this, which expert was subsequently used by the prosecutor to prove that he had. With his last attorney he micromanaged his own case such as to destroy the credibility of his defense witnesses. Convictions were affirmed.

COMMENTARY: With some criminal defendants a prosecutor is almost superfluous. Granting that the expert’s opinion that Bryant wrote the letters is correct, how could a defense attorney courteously and professionally undermine it? Here is the description of the expert’s method:

“A handwriting expert compared copies of the notes with samples from defendant’s hand and pointed out every similarity between letters and groups of letters she found. The

similarities covered almost every letter of the alphabet and included several groups of letters. She testified that there were more similarities than differences between the samples.”

1. We begin with Albert S. Osborn’s statement that handwritings by different people, but in the same language using the same script, necessarily have numerous similarities. If the witness disagrees, the witness lacks requisite knowledge of, and respect for, authorities.

2. We then turn to Ordway Hilton’s 1982 revised edition of *Scientific Examination of Questioned Documents*, citing the passages on criteria for proving authenticity of a signature, followed by those for proving falsity.

3. We then cite *105 International Criminal Police Review*, “Proper evaluation of dissimilarities in handwriting,” (48-51) Feb. 1957, where Hilton says a single, unexplained significant difference compels a finding of a different writer.

4. Finally, we carefully ask the witness to look at every difference between pairs of the same letter and between similar groups of letters, ending with traits not mentioned, such as slant, base line alignment, pressure, proportions, connectives, and so on and on.

A point said elsewhere herein is that using this method described as credited to the expert, one can pretty much prove anyone either did or did not write anything, whether the individual did or not.

1016. *People v Pierce*, No. 274869. (MI Ct. App. 2008)

COMMENTARY: Thomas Riley, a forensic document examiner, testified.

2009

1017. *In the Matter of the Stanley Bednarz Trust. Smigielski v Glanty*, 2009 Mich. App. LEXIS 1349 (Mich. App. 2009)

“Next, petitioners argue that the probate court abused its discretion when it precluded handwriting expert, Dr. Robert D. Kullman, from reviewing or testifying regarding his opinions of the original copies of the power of attorney, will and trust. Petitioners did not include this challenge in their Statement of Questions Presented. Therefore, it is not properly before this Court. See *MCR 7.212(C)(5)*; *Weiss v Hodge*, 223 Mich App 620, 634; 567 NW2d 468 (1997). However, even if we were to consider this argument, the probate [*8] court’s sanctions would not constitute an abuse of discretion. The court’s rationale was sound, taking into consideration the timing of the request and the possible prejudice to respondents.”

COMMENTARY: Though no testimony was given, this is included lest it be represented as an instance of finding either the expert or the expertise unreliable. The reasons given for the exclusion are legal technicalities.

1018. *People v Hodge; People v Buggs; People v Walker*, 2009 Mich. App. LEXIS 1525 (Mich. App. 2009)

Frank Marsh was properly qualified to testify as a handwriting expert. “Although

Marsh testified that he had not had any standardized training in document comparison, he did have [*29] extensive experience in the field....

“Further, Buggs argues that the graphology evidence presented by Marsh was unfairly prejudicial. We disagree. In summary, Marsh testified that the way a ‘y’ was written in the note was an indicator of possible violence or thinking of violence. Testimony stating that the author of the note was an indicator of possible violence or thinking of violence was hardly a revelation to the jury. It seems clear that by the author of the note calling himself ‘the .22 caliber killer,’ he has some violence on his mind. Marsh simply stated the obvious, and thus the court did not commit plain error affecting substantial rights in allowing the testimony.”

COMMENTARY: Every document examiner I know of, including those with graphological training whether they will admit to it or not, would agree that defense counsel should have made a very strong case at trial to have Marsh disqualified and his testimony stricken for having mixed in an extraneous discipline. It would be like a DNA expert testifying on paternity mentioning a person’s cultural choices as confirming evidence of family descent.

1019. *People v Larry*, No. 283364. (MI Ct. App. 2009)

In a conviction for solicitation to commit murder, part of the evidence was a letter defendant passed to another prisoner. “At trial, expert document examiner Ruth Holmes opined that there was ‘the highest degree of probability’ that the handwriting on the note defendant handed to Henderson matched the handwriting on other documents written by defendant.”

COMMENTARY: Ms. Holmes is a certified member of NADE and has served on its Board of Directors.

1020. *People v Lees*, 2009 Mich. App. LEXIS 13 (MI App. 2009)

“Detective Lieutenant Thomas Riley, a Document Examiner [*5] with the Michigan State Police, testified as an expert. Defendant does not dispute Riley’s qualifications as an expert witness, but rather claims that his testimony was inadmissible under MRE 702, MRE 402, and MRE 403 because Riley admitted that his findings were inconclusive. Defendant argues that expert testimony regarding inconclusive findings cannot assist the trier of fact. We disagree.”

Later a semantic discussion sheds this dubious light on why an inconclusive opinion is conclusively helpful in the court’s view: “An untrained layman would require assistance from an expert in order to determine the issue of exactly whose handwriting was on the questioned check. Moreover, just because evidence is ‘inconclusive’ does not mean that it is of no assistance to the trier of fact. Rather, it merely means that the evidence does not lead to a ‘definite result.’ See Black’s Law Dictionary (8th ed, 2004) (defining ‘inconclusive’ as ‘not leading to a conclusion or definite result.’). Riley’s testimony was not simply that his findings were inconclusive. Instead, he stated that there were indications that the signature

on the front of the questioned check did not belong to complainant, and that the signature on the back of the questioned check did belong to defendant. Riley merely qualified these findings as not being conclusive. The jury was entitled to determine how much weight to give to Riley's testimony."

COMMENTARY: The discussion never addresses specifically how inconclusive findings can assist the jury and do not make the testimony inadmissible. Compare this to the number of times a court dismisses expert testimony when any part of it at all is "inconclusive" or less than definite even.

2011

1021. *Hall v Bartlett, et al.*, Nos. 288293, 290147 (Ct. App. MI 2011)

"Oaklawn next argues that the trial court erred by refusing to admit the rebuttal testimony of forensic document analyst Erich J. Speckin, and by denying its motion for a new trial on this ground. We review a motion for a new trial under the abuse of discretion standard. *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670 682; 630 NW2d 356 (2001). Similarly, we review for an abuse of discretion a trial court's decision whether to admit rebuttal testimony. *Winiemko v Valenti*, 203 Mich App 411, 418; 513 NW2d 181 (1994).

"Rebuttal evidence must relate to a substantive rather than a collateral matter. *City of Westland v Okopski*, 208 Mich App 66, 72; 527 NW2d 780 (1994). As previously discussed, the purported testimony pertained to a collateral matter rather than a substantive matter. The trial court appropriately recognized that the discrepancy involved 'two numbers on two pieces of paper out of the thousands of sheets' and that the impact on the jury would be 'infinitesimal at best.'"

COMMENTARY: Cases like this indicate the disservice done by the anti-expert experts to their clients. They seek to exclude the opposing party's expert on their one highly cherished notion, while thus robbing the client of the several other avenues for limiting or preventing opposing expert testimony. Additionally, as stated elsewhere herein, one must master the discipline involved in order to prevail against its improper exercise. The worst of a practice is best demonstrated by contrasting it to the best of the same practice.

1022. *People v Gale*, No. 300036 (Ct. App. MI 2011)

Handwriting experts for the prosecution issued an opinion of inconclusive. Because the bank destroyed originals and only provided poor digital copies of checks in question, Gale could be neither identified nor eliminated as writer of the checks. She was convicted of several charges with consequences for being on parole at the time of the offenses.

COMMENTARY: I believe that, when banks destroy checks and other financial records and replace them with very poor digital copies, they should bear the costs that their destruction causes others, both actual loss and inability to establish reasonably expected redress at law. Their policy of destroying original records that their customers create has the

intended benefit of their enhanced profits and the unintended benefit of helping criminals get away with financial crimes by making it harder for honest litigants to prove their case, particularly against the bank for negligence in preventing forgeries.

2012

1023. *Berry, conservator for Nassab Berry, a protected person, v Myslinski*, No. 305564. (MI App. 2012)

The description of the expert's testimony is: "Robert Kullman, a forensic document analysis expert retained by plaintiff, determined that the signatures on the two mortgages were likely made by the same person, and that Nassab's known signature samples (both recent and historical samples) were likely signed by the same person. He further determined that the signatures on the mortgages, compared to the known signature samples, had 'substantial significant differences' and 'no significant similarities.' Kullman concluded that, 'to a high degree of probability' Nassab did not sign the mortgages. Kullman noted that he did not have original signatures from the samples, and therefore, the 'high degree of probability' is the highest opinion he could offer regarding the comparison, given the photocopy limitation."

The evaluation by the trial judge was: "When we're dealing with expert testimony like the testimony that Mr. Kullman presented, I have to have evidence that corroborates that testimony. I'm not gonna rely just upon expert testimony. Why? Because the facts have to support the conclusion that the expert reaches. Moreover, the expert is being paid. And so that always makes their testimony somewhat suspect. So from my perspective, I'm looking for evidence that supports Kullman's opinion. And I don't see it there. The facts support Myslinski's testimony. So, I find that, in fact, the mortgages were not forged."

COMMENTARY: The trial judge was upheld, but the report yells out for a critical evaluation of the matter. The suspicion is that the trial judge judged from biases, not objective evaluation of the evidence. "T" is a puzzlement," to quote the King of Siam, that facts must prove the expert right, not the expert prove the facts, and here supposedly "the facts" support the defendant. Additionally, the supporting "facts" would have come from the defendant, who, if the documents were forged, might not have done the forgery, but certainly benefitted by it.

I have touched on this elsewhere, that we must bear in mind that case reports are authored by those who, however rarely, are only justifying their own position on the issues addressed. They see that which they see and not what they do not see. They believe that which they believe and not the opposite of what they believe. Strong inclinations to subjectivity are inherent in this truth about all of us. We assume going in that every case report is entirely objective and impeccably accurate in all details reported. I believe this case report is a most sobering experience that nudges us to modify our implicit, but at times blind, faith in all that issues from our courts of law.

1024. *Berry v Myslinski*, No. 305564. (Ct. App. MI 2012)

INTRODUCTORY NOTE: This serves as a small ruler so the reader can measure the various possibilities I faced in approaching the annotation of a case report. I had forgotten that I previously did the immediately above annotation of this same case taken from a different source. Both evaluations are still my views, but what one will focus on can well vary depending on the context of one's professional concerns at the time. In any case, good reader, do consider that like any other human being I am subject to subjective factors that I might not even recognize, a point I make indirectly regarding some judges as the one in *Berry v Myslinski*. Hopefully, you will find me neither too contradictory nor overly contrary.

The next to last paragraph reads: "Finally, although plaintiff's handwriting expert, Robert Kullman, testified with a high degree of certainty that Nassab did not sign the mortgages, '[t]he [trier of fact] determines the weight given to expert testimony.' *Krohn v Sedgwick James of Michigan, Inc.*, 244 Mich App 289, 304; 624 NW2d 212 (2001). In this case, the experienced and learned trial judge stated that Kullman's testimony was not reliable because the facts did not support the conclusion that Kullman reached. Furthermore, the court reasoned that Kullman had a financial bias because plaintiff was paying him to testify."

COMMENTARY: Kullman need not take personally or professionally the reasoning given to discount his opinion. On that logic, all expert witnesses should be discounted. But lest one think that the learned judge lacked enough learning to be flexible in his logic, the last paragraph reads:

"Nor did the trial court clearly err in finding that defendant and the notary, Daniel McAnulty, were credible witnesses. Defendant testified that Nassab was present at the December 2, 2004, and April 22, 2005, closings. McAnulty testified that he actually witnessed Nassab sign the April 22, 2005, mortgage. The trial court specifically stated that it believed both defendant's and McAnulty's testimony. The trial court acknowledged that it had considered McAnulty's potential bias — McAnulty worked with defendant and Robert at Real Estate One and rented a home from defendant. Nevertheless, the trial court did not think that McAnulty had enough of a motive to lie for defendant. Therefore, it cannot be said that there is a definite and firm conviction that a mistake has been made."

I suspect when courts of appeal say the trial court did not "clearly err," the appeal justices know there was error but choose to remain insufficiently clear about it. Or if they say it was not "manifest error," one can muddy the recounting of the record sufficiently to make it less than a manifest revelation from human testimony, if not from heaven itself.

1025. *McConnell, et al., v McConnell, et al.*, No. 304959. (MI App. 2012)

COMMENTARY: In accepting the testimony of the handwriting expert, the trial court properly considered it along with the other evidence, not just in itself.

1026. *People v Franklin*, No. 300371 (MI App. 2012)

At trial, a woman identified two love letters to her as having been written by defendant. He denied writing them along with a third the prosecutor presented. "The trial court decided to call a handwriting expert to examine the letters and compare them with

samples of defendant's known handwriting. After an adjournment, the trial court called Detective Jan Johnson, a handwriting analyst with the Michigan State Police. Defense counsel did not object. Detective Johnson opined that one of the letters was written by defendant, and that defendant 'may have' written the other two letters."

COMMENTARY: There was no error involved.

2013

1027. *In re Marion R. Craig Trust. Hellebuyck v Tilley; City of Auburn Hills v Tilley*, Nos. 307618, 307684 (MI App. 2013)

A note, handwritten by decedent several days before he committed suicide, was stained with his blood. "Petitioners contend, however, that the suicide note is not a will because portions of the note are illegible given that it was soiled with Alan's blood, and thus, it is impossible to know whether Alan intended the note to be his last will and what he meant by saying that he wanted 'Earl' to be his 'beneficiary.' However, two forensic analyses of the suicide note, one by the Oakland County Sheriff's Office, and the other by Tilley's expert, Thomas P. Riley, a forensic document examiner, provided transcriptions of the contents of the note. These transcriptions were consistent with one another...."

The note was found to be a will and to leave all but certain contents of decedent's house to Tilley.

COMMENTARY: Decipherment of handwriting, that is illegible or obliterated in some way, is a subspecialty within handwriting identification, though not exclusively within the aegis of document examination. Riley's qualifications were not challenged, only the decipherment and its interpretation.

1028. *People v Clark*, No. 310253 (MI App. 2013)

Defendant was convicted of first degree murder and other offences. Part of the evidence against him was this:

"A handwritten note was found at the crime scene which stated, 'He said tell the family he loved them. Sincerely, "The Killer."' A forensic document examiner testified that the writing on the note was consistent with defendant's writing."

COMMENTARY: One wonders of the mentality that unkindly kills but does the far less unkindness of leaving the consoling note.

1029. *People v Kwasny*, Nos. 306784, 309924 (MI App. 2013)

After listing some changes in testimony by Defendant's witnesses, the Court continues: "In addition, although Wendy Carlson, defendant's handwriting expert, testified that it was her opinion that Michael signed the checks given to Penley and Kennedy, she also testified that Michael signed the four checks that were the subject of Brunke's four uttering and publishing convictions. Brunke however, testified that she knew and had previously admitted that Michael had not signed those checks. Under these circumstances,

where there was evidence that defendant had a pattern of using nonsufficient fund checks or checks belonging to closed accounts, including twice using young women to cash bad checks, and where credibility questions as to some of defendant's witnesses were raised, it does not affirmatively appear that it is more probable than not that an error by the trial court in denying defendant's motion to sever was outcome determinative in the Kennedy case or the Penley case.”

COMMENTARY: There is debate as to whether a document examiner should know background information about a case, since that might bias performance. However, I cannot think anyone would doubt it is well to know background information directly bearing on documents to be examined, such as here where Michael had already been cleared of some false writings that Carlson tried to pin on him.

1030. *People v Wilson*, No. 308076 (Ct. App. MI 2013)

In a check forgery case, trial counsel was allowed to retain a handwriting expert. He gave the expert three documents, the alleged forged check, one exemplar from the victim and one from the Defendant. The expert told counsel he needed more material, but counsel never contacted him again but told the court he had made a strategic decision not to use the expert. Wilson was convicted. Appeal counsel provided ten more checks to the expert who testified at the post trial hearing on motion of ineffective assistance of counsel that it was highly probable that all were written by the same person. If the jury had heard such testimony from the defense expert, it was reasonably probable that the jury might not have convicted.

COMMENTARY: It seems that it is very rare that a claim of ineffective assistance of counsel carries the day. The starting point for the court of appeals is that the trial judge got all the facts right and trial counsel made a reasonable strategic decision. It is uphill all the way for the convicted defendant. Here appeal counsel did what I do not recall reading in another such case, counsel obtained a proper examination and report from the expert who had been dropped by trial counsel. It seems that appeal attorneys are adverse to decently investigating the case. This case report is very instructive for the reasoning whereby the Michigan Court of Appeals sorts out the pertinent facts and then applies the law on ineffective assistance.

In one criminal case, trial counsel told me he had already stipulated that the check defendant was accused of stealing and forging, the same accusation against Wilson, was a forgery. Please do not do that until your own handwriting expert examines all the material. Yes, it might be a forgery, but only because payor disguised his own handwriting. One well esteemed text in document examination has an illustration of the questioned and an exemplar signature together. The questioned signature has all the indications of disguise of writing by use of left slant, but the legend says it was a forgery by imitation. If so, it was one very silly imitation, getting slant, base line and other features incorrect, the very features that research shows results most often in a deliberate disguise by use of left slant.

1031. *Rogers Excavating, Inc., v Mana Properties, LLC., and Capital Source Bank*, No. 308514 (Ct. App. MI 2013)

Rogers, owned by Carroll Rogers, was construction contractor on a project for Mana. Rogers had a lien on the property under which it sought payment due at the end of construction. McQuillan, manager of the project who had contacted Carroll Rogers to bid on the job, produced waivers of lien allegedly signed by Rogers. He in turn denied ever signing a waiver of lien, and had a handwriting expert verify that the signatures on the waivers were forged. The expert died before trial, and the trial judge would not let the expert's report into evidence since it was hearsay.

There were inherent difficulties with the liens, and one witness testified to belief McQuillan was forging Carroll's signature. "Moreover, Carroll Roger's name was spelled with only one 'l' in the final waiver, which Carroll clearly included in all of his known signatures. One need not be a handwriting expert to seriously question the validity of a signature that misspells the name of the purported executioner. Three of the other waivers of lien also omitted the second 'l' in Carroll's name. Further, a comparison of Carroll Rogers' known signatures on the contract and change orders and the signatures on the lien waivers reveals clear distinctions. See MRE 901(b)(2) (reflecting that handwriting comparisons and opinions are not the sole purview of experts)."

Meanwhile, McQuillan had severe memory problems about the waivers he had produced. Rogers prevailed on all his issues.

COMMENTARY: "One need not be a handwriting expert to seriously question the validity of a signature that misspells the name of the purported executioner." Indeed, the law assumes every citizen serving on a jury is a fully qualified handwriting expert who can validly form all opinions any handwriting expert can about handwriting.

1032. *In re Estate of Errol L. White. Fraser and Bryant v Oleksiak*, No. 308788 (MI App. 2013)

"A forensic document examiner, Thomas Riley, was called as a witness by Errol's personal representative. Riley was not able to offer an opinion on the authenticity of Errol's signatures from the copies of the two wills, and he was concerned about the court accepting copies in lieu of original documents. Riley explained that the copying process could cause a loss of detail, hide elements of fraudulent writing, and hide evidence of signature manipulation. He also noted that in each of the two wills he examined, the left margins of pages one and two were significantly different. Riley could not tell what caused the differences.

"The probate court found that the copy of Errol's February 4, 2011, will was valid and admitted it to probate."

COMMENTARY: We document examiners do well to caution clients and courts on all the vagaries of evidential documents available only in copy. However, I am of the persuasion that we have not acted expertly until we explain how to tweak the very best and most reliable evidence out of them and how to recognize when they positively merit our

skepticism. Anyone can tell the bad things about almost any common item in our lives, but only the expert can see the why of the bad and the how of obtaining the best in a bad situation. Things are progressing among handwriting experts so that they are most useless when clients and courts have most need of them. The court still has to make as informed an estimate as it can whether to credit a disputed document, even when the alleged expert is of use only when least needed.

2014

1033. *Laliberte v Bradbury, et al.*, No. 315975 (Ct. App. MI 2014)

“Defendants presented expert opinion testimony by way of deposition from Thomas P. Riley, a forensic document examiner. He was provided with a number of exemplars of plaintiff's signature and asked to evaluate whether the signatures ostensibly from plaintiff on the two deeds were, in fact, her signatures. He noted that one of the deeds was a copy, albeit a high-quality one.[1] He opined that it was ‘highly probable’ that the signatures on the deeds were from plaintiff, but noted that there were ‘a couple of variations present in the questioned signatures that are not represented in the known signatures.’ He further cautioned that the known exemplars were from 2010 and 2011, whereas the questioned signatures were from 2005. Riley was not asked to, and did not, examine any other signatures.”

COMMENTARY: I would imagine that the couple of variations not found among the exemplars were not of such significance that the opinion would have to be stated with less assurance. Research has shown that high-quality copies permit 95% or better observations by handwriting experts. Footnote 1 states that the deed which was in copy was not in dispute.

Ideally Riley should have been provided with exemplars spanning 2005 to 2011 so that a linear study could determine whether any significant changes had been made in the writer's signatures. In one case I could determine that a lady had not made any significant changes in her handwriting in the previous 15 years, since the rare luxury of proper exemplars made it possible. So we cannot assume any given writer has or has not made significant changes in style of writing for a number of years, though the greater the gap in time the greater must be our caution. I imagine there would be some legal rule on which party has the burden of proving either such change was made or was not made. If at all possible, work to make the steeper climb to the higher peak your opponent's task.

2015

1034. *People v Cargle*, No. 320389 (Ct. App. MI 2015)

COMMENTARY: The opinion of a handwriting expert was received.

2016

1035. *In re McCarver Estate. Volosuk and Ruff v Azar*, No. 325377 (Ct. App. MI 2016)

The trial judge found handwriting expert opinion of Ruth Holmes not credible because of little time she took to look at original of a holographic will. However, the Court of Appeal said that testimony of the notary was sufficient to establish the authenticity of the will, so the trial court's decision was reversed and remanded.

COMMENTARY: Maybe this is like the situation where enough handwriting experts are completely stumped when confronted with copies, only that the myth prevails in the belief that copy machines copy fully recognizable handwriting while not copying any perceptible handwriting evidence.

1036. *People v Pinkney*, No. 325856 (Ct. App. MI 2016)

Testimony was received from Detective-Sergeant Mark Goff, a forensic document examiner, as to alteration of handwritten dates on election petitions by use of multiple pens.

1037. *In re Estate of James V. Ward, Jr.; James V. Ward, III, v Powers*, Nos. 327991, 329132 (MI Ct. App. 2016)

Petitioner claimed the document examiner gave two incompatible opinions. The Court of Appeal explains why not by discussing what several theoretical alternatives would not be incompatible.

COMMENTARY: Attorneys and experts often show a serious lack of logic. Though courts of law would not necessarily pass an advanced course in Aristotelian logic, by and large they give excellent guidance in the rudiments of logic. I have not seen logic features in any course or outline for a course in document examination, yet it is seriously claimed one can only be a reliable (and by implication a logical) expert by suffering such intellectually lacking courses taught by one who previously studied a course lacking all essential considerations of logic. Some rudiments of logic are discussed among my publications at <https://Archive.org>, particularly *Testing the Reliability of Expert Opinions in Texas: Guidelines from Kelly, du Pont/Daubert and Their Progeny* and *Reliability Testing of Expert Handwriting Opinions*.

3. Michigan Supreme Court.

I have no case reports for Michigan Supreme Court.

W. MINNESOTA CASES.

1. *Minnesota Trial Courts.*

I have no case reports for Minnesota trial courts.

2. *Minnesota Courts of Appeal.*

2000

1038. *In the Matter of the Real Estate Appraiser's License of Fidelis E. Agaga*, 2000 Minn. App. LEXIS 1216 (Minn. App. 2000)

“Agaga next alleges the ALJ [Administrative Law Judge] prejudiced his rights by accepting [Karen] Runyon’s testimony. He asserts that foundation was lacking because Runyon relied [*8] on photocopies rather than originals in making her determinations....

“During the hearing, Agaga objected to admission of the photocopied documents and asserted that these documents were not the best evidence. The ALJ overruled the objection, concluding that the photocopies were the best available evidence. The ALJ noted, however, that use of photocopies would impact his fact-finding. [Footnote omitted.]

“Agaga also objected on foundation grounds when Runyan was asked for her conclusions. The department then offered to question Runyon regarding whether she had sufficient material with which to formulate an opinion. When asked this question, Runyon [*9] responded that she could give a conclusion ‘with a limitation’ because of the use of photocopies. She then explained the procedure she used in evaluating the samples and opined that it was ‘probable’ that Agaga signed the questioned documents. She noted that her conclusion could have been more decisive if she had used original documents.”

COMMENTARY: By the case report, Ms. Runyon was forthright and adhered to accepted standards. The two spellings of her name are in the case report, “a” appearing only once. The wording of the best evidence rule is something to be kept in mind. The Attorney’s General office had the originals but could not find them at the time of the hearing. It seems there should have been some sanction for such carelessness.

1039. *Fletcher v State*, 2000 Minn. App. LEXIS 997 (Minn. App. 2000)

COMMENTARY: A handwriting expert concluded that appellant had drafted a “hit” contract.

1040. *In Re: Estate of Clara Marie Snow*, 2000 Minn. App. LEXIS 525 (Minn. App. 2000)

“The district court [*4] found that the signatures on the purported will were not Clara Snow’s. The district court relied on the testimony a handwriting expert, Ann Hooten, who testified that the signature on the signature line of the will was ‘highly suspect’ because it deviated from other known signatures of the decedent. Hooten also testified that there was a ‘strong probability’ that the signature on the will was not Clara Snow’s, and that the

signatures appeared to be traced or forged.”

COMMENTARY: Minnesota requires two witnesses to sign the will within a reasonable time of Testator’s signature. One witness gave April 27, 1995, the Saturday Testator signed as the date he witnessed her signature. However, April 27, 1995 was a Thursday, so that, combined with other evidence, this began the judge on a line of thinking whereby the finding was that the will had not been witnessed within a reasonable time but a year later.

1041. *State v Mancheski*, 2000 Minn. App. LEXIS 55 (Minn. App. 2000)

COMMENTARY: A handwriting expert testified.

2002

1042. *Langeslag v KYMN Inc., et al.*, 2002 Minn. App. LEXIS 1202 (Minn. App. 2002); reversed on other grounds, 2003 Minn. LEXIS 407 (Minn. 2003)

“While discovery was reopened, respondents disclosed their handwriting expert and the district court agreed to permit that expert to examine the letter. Appellant contends that she was prejudiced as a result. However, at the bench trial on appellant’s non-jury claims, both appellant’s handwriting expert and respondents’ expert testified about the letter. The district court found that, ‘based on her education and extensive experience, [respondents’ expert] was the more credible witness.’ Appellant asserts that she was damaged by the court’s decision to admit respondents’ expert as a witness, but she does not [*23] explain how, given that her own expert had a longer time to examine the letter and was also able to testify.”

COMMENTARY: The rule should be that weight of an expert’s opinion is to be based solely on the theory, methodology, factual observations and logic of the opinion itself. To base credibility and acceptance of an expert’s opinion on the qualifications to testify as an expert is for the fact-finder to surrender the legal obligation to find fact to the opinion witness. Thus a suave expert need not present any evidence worthy of credence in order to enjoy an allegedly greater credibility than a more competent, though less experienced, opposing expert. Thus, attorneys and litigants may shop for the expert most expert at blarney.

2005

1043. *In re: Estate of Ann C. Dalbec, Deceased*. No. A04-1524. (MN Ct. App. 2005)

The contestant of Dalbec’s will relied on the testimony of forensic document examiner Karen S. Runyon. The case report gives a rich array of evidence Runyon developed in support of her opinion that the signatures in question were not by decedent. The court’s discussion sets forth the reasons why the testimony of purported eye witnesses was credited over Runyon’s testimony.

COMMENTARY: The case report is an example of how a court can always find excuses, I mean legally acceptable reasons, to reject evidence. For example, it is said that Runyon admitted there was a 25% chance of error in her opinion. I take that with caution since standard terminology for expressing opinions by document examiners is not mathematical. Even so, a 25% chance of error for an opinion being in error is not 25% proof of the truth of the contrary opinion, yet psychologically that is how it is taken. To put it another way, since the 25% chance of an incorrect opinion actually means a 75% chance of a correct opinion, it also means a 75% chance that the contrary opinion is in error. It is some kind of foolishness to go with a 75% chance of being in error. However, this all points up the wisdom of McAlexander, et al., who first published the terminology in the March 1991 issue of *Journal of Forensic Sciences*, that mathematical statements should be avoided in handwriting opinions.

Another part of the misunderstanding of what Runyon had testified to is the lack of precision and quality in expression as given in the case report. I suspect that the commendable list of observations credited to Runyon support a much firmer finding of falsity, since Ordway Hilton in his book said a single significant difference prevents an identification until reasonably explained. In an article in *International Criminal Police Review*, February 1957, he said a single unexplained significant difference compelled a finding of a different writer, a position I consider as a bit overdoing it. Still, Runyon seemed to have found several such significant differences but might not have expressed them as concisely and strongly as she might have. This is not offered as a criticism of Runyon, since I suspect the case report was written to justify the finding in favor of forgery. I would believe most document examiners have suffered such to happen to the best of their exposures of forgery.

2012

1044. *State v Nelson*, No. A11-1907 (Ct. App. MN 2012)

“[A] handwriting expert testified that Larson's signature on the alleged bill of sale looked unnatural. We defer to the jury's acceptance of this evidence.”

COMMENTARY: Naturally, all of us should accept the unnatural thinking of experts who use such unnatural and unscientific terminology to express thoughtless thinking with ingroup, buzz-word expressions.

2013

1045. *Bellino v Bellino*, No. A12-2319 (MN App. 2013)

“Two witnesses opined that the signature on the power of attorney was not respondent's. Brenda Anderson, a forensic document examiner, testified that, in her expert opinion, the signature on the power of attorney was not genuine. For reasons explained in its order, the district court did not credit Anderson's opinion. Annette also testified that, in her

opinion, the signature on the power of attorney was not respondent's. Her opinion was based on her familiarity with respondent's signature.”

COMMENTARY: The appeal decision does not state the reasons for not crediting Anderson’s opinion, but Annette's carried the day for the same conclusion: “In sum, the district court determined that Annette's testimony regarding the authenticity of the signature on the power of attorney was credible, and this court will not second-guess that determination. See *In re Stisser Grantor Trust*, 818 N.W.2d at 507.”

2014

1046. *In the Matter of the Estate of: Janet Rae Pawlik*, 845 N.W.2d 249 (MN Ct. App. 2014)

Janet Pawlik was survived by two sons, Thomas and Timothy. Thomas petitioned to inherit under a will making him sole heir. Charles Bond, to whom Timothy owed money, was ruled an interested party, permitting him to challenge the validity of the will, which he did successfully: “No original will was filed with the district court, but Thomas filed a copy of the purported will signed by the decedent and two witnesses. At trial, one of the witnesses invoked her privilege against self-incrimination and refused to verify her signature. A forensic document examiner testified that the decedent's signature on the purported will was ‘transferred from another document by means of cut and paste.’” The will was found to be false, so the brothers inherited equally since mother died intestate. Bond would have to follow procedures established by statute to place a lien on the real property Timothy would then inherit.

COMMENTARY: One would hope that mother deserved better sons than these, one being a forger and the other a welcher on his just debts. The implication is that Thomas was endeavoring to help his brother escape paying Bond rather than snitching the entire inheritance for himself. There may not be honor among thieves, but in this case it seems there was brotherly love of a sort. I apologize for including a case not technically within the parameters for this collection, but I could not resist the tale of the fraternal scoundrels and the fruits of my literary license in describing it.

2016

1047. *State v Orwig*, No. (Ct. App. MN 2016)

“Police found Brock Orwig in his former wife's garage after he went into her house and bludgeoned her head with a club. The state charged Orwig with attempted first-degree murder, first-degree burglary, and second-degree assault. The jury found Orwig guilty of second-degree assault but acquitted him of the other two charges.”

A handwriting expert testified that Orwig probably wrote a to-do list for carrying out the crime and “may have also produced the map” how to go from his place to his ex-wife’s house to carry out the crime.

COMMENTARY: The man's detailed planning of his crime was commendable, and the trail of clues he left behind him was even more commendable as being a citizen's best effort at helping law enforcement fight such crimes as his. Read the case report for instructions how to convict yourself if you should descend to such cruelty as he practiced on his former spouse.

3. Minnesota Supreme Court.

1999

1048. *State v Bauer*, 598 N.W.2d 352, 1999 Minn. LEXIS 452 (Minn. 1999)

At page [*11]: "A handwriting expert from the BCA testified that while appellant could not be identified or excluded as the author of the note attached to the brick, it was 'probable' that Tran did not write the note."

COMMENTARY: Appellant/defendant's conviction of murdering his estranged wife was affirmed. The note and brick had been thrown through the victim's window before the murder. Tran was a man with a violent past who was suggested as the murderer by the defense. BAC is Bureau of Criminal Apprehension.

2001

1049. *State v Sessions*, 621 N.W.2d 751 (MN 2001)

At page 754: "The trial court read to the jury the parties' stipulation that, if called, a forensic document examiner would testify that the checks that Haynes and Knoebel cashed were not written by Allen, Haynes or Knoebel. The expert also would testify that the writings on the face of the checks included numerous significant similarities to appellant's writing samples and that it is highly probable that appellant wrote those checks."

COMMENTARY: The stipulation was equivalent of the expert's appearing in court personally and testifying under oath to the stated opinion. It might be considered an acknowledgment of the expert's quality as a witness because the defense especially fears the impact.

2004

1050. *Ture v State*, 681 N.W.2d 9, 2004 Minn. LEXIS 312 (Minn. 2004)

COMMENTARY: A handwriting expert testified that Ture signed each page of a confession to a murder.

2005

1051. *State v Martin*, 695 N.W.2d 578, 2005 Minn. LEXIS 267 (Minn. 2005)

COMMENTARY: A handwriting expert identified defendant's partner in crime, Young, as writer of handwritten notations on instructions to the murder victim's residence.

2006

1052. *State v Young*, 710 N.W.2d 272, 2006 Minn. LEXIS 99 (Minn. 2006)

COMMENTARY: This is the same murder case, but separate trial, as *State v Martin*, 695 N.W.2d 578., cited above. The same handwriting expert testimony was given.

2009

1053. *In Re Petition for Disciplinary Action against Patricia Jean Ryerson*, 760 N.W.2d 893, 2009 Minn. LEXIS 29 (Minn. 2009)

In a disciplinary action against an attorney, a forensic document expert testified that there was "a strong probability" that clients' signatures on a variety of documents were false. He explained that by "American Standards of Testing & Materials" "a strong probability" meant that the examiner was "virtually certain."

COMMENTARY: Though the name is incorrect, this case gives another judicial nod to ASTM terminology.

2010

1054. *State v Hull*, Order, Court File No. 48-CR-07-2336 (MN 7 Judicial District 2008); affirmed, 788 N.W.2d 91 (MN 2010)

The trial court denied the defense motion to exclude handwriting expert evidence. The order gives no reason why.

788 N.W.2d 91

At 102-103: "Hull also objects to evidence that the State presented at trial by a handwriting expert and a fingerprint identification expert. The handwriting expert offered an opinion that Hull was probably the *103 author of the following documents: the torn page containing the plan to kill Wilczek by stabbing him, the note that J.B. found on the door of Performance Exhaust, a letter sent from jail to Wilczek's parents, and several checks written on Wilczek's personal and business accounts. The fingerprint expert testified that known prints of Hull matched latent prints found on four items—the handle of a knife found in Wilczek's truck, the ripped notebook page containing the plan, the note found on the autoshop door, and a check from Wilczek's business account."

COMMENTARY: Writing is the same as speaking only both more beneficial and more damaging, the latter because the Roman proverb still holds, only more strongly, since

there are more ways to make and preserve written words: “Scripta manent.” Written things remain. So guard your writing fingers as closely as you guard your talking tongue.

2014

1055. *State v Rossberg*, 851 N.W.2d 609 (MN 2014)

The Minnesota Supreme Court affirmed Rossberg’s conviction for first degree murder. A forensic document examiner concluded that Rossberg “probably” wrote threatening notes found in the victim’s trailer. While Rossberg was in jail, another inmate found an envelope with a handwritten letter in which the writer claimed he was hired to assassinate both Rossberg and the victim; the assassin asked that the former be released so he could complete the job. “The document examiner could only perform a limited analysis of the letter because the handwriting seemed ‘careless’ or unnatural, but she found ‘indications’ that Rossberg ‘may have’ written it.”

COMMENTARY: One would dearly wish that the evidence from the document examiner played no part in the jury’s convicting Defendant. The term “careless” is quite a careless way to express technical or scientific opinions. What is the standard of care we are supposedly to follow when writing? If I carelessly blur just one oval, is that careless enough to be considered scientifically careless? “Indications,” as stated elsewhere herein, is no more than basis for a reasonable suspicion. “May have written” at least suggests a reasonable probability, something beyond what “indications” means technically. Hopefully the document examiner was far more precise in both thinking and expression than the case report suggests. If not, the muddled expertise should have been disallowed.

X. MISSISSIPPI CASES.

1. Mississippi Trial Courts.

I have not found any Mississippi trial court cases.

2. Mississippi Courts of Appeal.

1992

1056. *Rogers v State*, Court of Appeals, Mississippi, No. 92-KA-01170 COA, 1992

State “disclosed that Frank Hicks, a handwriting expert, would be called to establish that a handwritten check list concerning the murder of the victim and the disposition of the body and evidence may have been written by Rogers.” It was not error that Trial Court denied Rogers’ *in limine* motion to exclude the testimony since it was not speculative. Hicks had explained all aspects of his opinion and “noted certain discrepancies in the handwriting samples and explained how these affected his conclusion.” An expert opinion need not be

beyond a reasonable doubt, only the State's case need be. The testimony was above the level of mere speculation and was helpful to the jury in understanding the evidence.

COMMENTARY: The testimony was clearly found to be reliable, and it is intimated that the cautious expression of the opinion enhanced its reliability. I cannot recall a case report where the expert handwriting witness is described as giving such intelligent consideration to contrary indicators. It ought to be standard practice to delineate contrary data, but too often the contrary is summarily dismissed as inconsequential even by the presumably objective expert.

1999

1057. *Waldon v State*, 749 So. 2d 262; 1999 Miss. App. LEXIS 556 (Ct. App. MS 1999)

Defendant was accused of uttering two forged checks. Fingerprint expert testified she found his prints on the checks. Then defense attorney stipulated to Frank Hicks' opinion that Defendant wrote portions and may have written other portions of the checks. On motion for new trial Defendant maintained that he was not consulted about nor understood the implications of the stipulation. Defense attorney testified otherwise. On appeal Defendant said same things. However, trial court accepted attorney's version, defendant did not object at time stipulation was made, and it was good trial tactics to avoid impact on jury of the live testimony.

COMMENTARY: Another consideration according to the Court of Appeals was that the stipulation was less than pristinely clear while live testimony would be quite clear. As to a defendant objecting at the time of such stipulation is made, are not defendants given to understand they rely on their trial attorneys to make all necessary objections? In a number of these case reports the judge admonishes the defendant for speaking up such as to make an objection on the record.

2001

1058. *Young v State*, 791 So. 2d 875, 2001 Miss. App. LEXIS 275 (MS App 2001)

Convicted on two counts of uttering a forgery, Young contended it was never proven beyond a reasonable doubt that he knew the two checks in question were forged. He had endorsed them with his signature and identification data. Frank Hicks, a forensic document examiner, also referred to in the report as a "forensic scientist," testified that neither the victim nor Young wrote on the face of the check. He said that Young's girlfriend may not have done so, but that her exemplars had indications of disguise.

COMMENTARY: This is a case in which an opinion regarding disguised handwriting was received. Also, the Court of Appeals refers to the handwriting expert as a "forensic scientist."

2010

1059. *Mapp, et al., v Chambers*, 25 So. 3d 1096 (MS Ct. App. 2010)

“¶¶ 10. Frank Hicks testified, by deposition, as a forensic document examiner. Hicks expressed his opinion, to a reasonable degree of probability in the field of forensic document examination, that the signature on the deed was that of Marilyn. However, in his deposition Hicks stated that he did not have enough known signatures to determine the writer’s full range of variation. He went on to testify that he did not have any signatures that were contemporaneous with the date on the questioned document.”

The trial court decided to the contrary which was affirmed on appeal. The reasoning by the trial court for discounting Hicks’ opinion is stated thus:

“¶¶ 26. The chancellor then considered the deposition of Hicks, who was accepted as an expert in the field of forensic document examination. Hicks’s determination was that the signature of Marilyn was prepared by the same person, but his testimony falls short of a ‘virtually certain’ degree of confidence. The chancellor found that Hicks was essentially questioning his own opinion. The chancellor determined, based on Hicks’s deposition, that Hicks did not form a conclusive opinion on whether the signature on the deed belonged to Marilyn.”

COMMENTARY: I quote both passages concerning Hicks in order to illustrate that an expert witness cannot guess what part of one’s testimony the fact-finder will ignore or what part build into an evaluation that the expert would most likely not agree with.

3. Mississippi Supreme Court.

1993

1060. *McNeal v State*, 617 So. 2d 999 (MS 1993)

In a trial in which Defendant was convicted of murdering his wife, the defense wanted to have entered into evidence a suicide letter alleged to have been written by the wife nearly 20 months previously. The trial judge ruled it irrelevant since it preceded the murder by 20 months and it was not proven that the letter, had only in photocopy, was in her handwriting.

At pages 1009-1010: “Specifically, the judge felt that the note had no relevance whatsoever to the crime with which McNeal had been charged: [N]othing she said in [the note] has any bearing upon the murder. It may shed some light on [McNeal and Darlene’s] relationship [in February 1984], but that has nothing to do with the murder [which occurred in September 1985 — nearly twenty months later].

“... It’s too remote... .

“... [I]t wasn’t written at a time when she was anticipating dying; it was a murder; it was written a year ahead.

“The judge also questioned the authenticity of the note: ‘[T]he original is not even

here. This is a [photo]copy. That's all I've seen. I don't know where the original is. Nobody has mentioned it to me....

“The [handwriting] expert has testified [that the note is] not conclusively hers. The mother said it looks like it, but look alike is not it. It's similar to. That doesn't get it. You know what I mean? You've got the testimony problem that it may or may not be her writing to start with.”

COMMENTARY: I give the extended quote to give the flavor of the dynamics of courtroom discussion and of what is apparently the judge's deep intellectual and deep emotional persuasion of how he must rule about what he faces.

1996

1061. *Goodsell v Mississippi Bar*, 667 So. 2d 7 (MS 1996)

COMMENTARY: Thomas L. Packer was accepted by the court as a handwriting expert.

1998

1062. *Davis v State*, 722 So. 2d 143 (MS 1998)

COMMENTARY: Testimony was received from handwriting expert Frank Hicks.

1063. *Sewell v State*, 721 So. 2d 129 (MS 1998)

COMMENTARY: Testimony of Frank Hicks, handwriting expert, was received.

2000

1064. *Alexander v State*, 759 So. 2d 411, 2000 Miss. LEXIS 104 (MS 2000)

Convicted of capital murder and sentenced to life without parole, among other errors appellant argued that the State's handwriting expert, A. Frank Hicks, had improperly used letters Alexander wrote to his wife as exemplars. However, the Supreme Court of Mississippi states in its ruling: “P34. While the admission of any information contained in Alexander's letters [*24] to his wife would have posed a privileged communication problem, the expert's mere reliance on the letters for handwriting purposes poses no such evidentiary bar. In the latter instance, the expert is not concerned with the actual information contained in the letters; rather, he is concerned with the manner in which the letters and words are formed--the actual handwriting. The content of the privileged letters was not introduced into evidence; and therefore, there was no violation of M.R.E. 504(b). Though unnecessary, the essence of the problem was avoided when the handwriting expert altered his testimony to express opinions unrelated to the documents in question. Today's ruling is consistent with other jurisdictions. [Citations omitted.]”

COMMENTARY: This is a good example of adjustment to avoid a potential problem

as well as authority for use of privileged material in a way to respect the privilege.

1065. *Logan v State*, 1999 Miss. App. LEXIS 182; affirmed in part and reversed in part, 773 So. 2d 338; 2000 Miss. LEXIS 267.

1999 Miss. App. LEXIS 182:

“P32. In the instant case, the prosecution had over seven months from the time they seized the evidence until trial to obtain a handwriting analysis. However, the State waited until several weeks before the trial was scheduled to begin to obtain a handwriting examination. Burkes testified that he completed his report on September 9, 1996 and had discussed the results of this examination with Investigator Jim Smith before this date. The State did not disclose this information or list this witness until September 20, 1996, after business hours and two working days prior to trial. This insufficient notice, which also violated the discovery rules, did not allow Logan enough time to have an expert review the report and examine the same original documents and exemplars. Furthermore, these necessary documents were never presented to Logan at any time. Therefore, this assignment of error is well taken.” For this and other errors, Logan’s conviction was reversed and the case remanded for a new trial.

2000 Miss. LEXIS 267:

“P40. When witnesses other than the defendant are available to refute the State’s evidence, and these witnesses are not placed on the stand, this Court, in prior cases, has held that comments similar to those about which Logan now complains do not constitute reversible error. *Conway*, 397 So. 2d at 1100 (citing *Clark v. State*, 260 So. 2d 445 (Miss. 1972)).

“P41. With regard to the assertion that he presented the vehicles for inspection in Brookhaven, Logan could have produced alibi witnesses testifying that he was elsewhere at the times he was allegedly in Brookhaven. He could have also produced handwriting experts to testify that the handwriting on the applications was not his own. With regard [*27] to the rivets, Logan could have produced experts in the field of metallurgy to refute Luke’s contention that the rivets were home-made, and not factory originals.”

This was a reversal of the Courts of Appeal finding of error, but other errors, as the one regarding the handwriting expert testimony, were not reversed and so the remand for a new trial was upheld.

COMMENTARY: I have not seen a later case report as to whether or not Logan was convicted on the retrial.

2001

1066. *Burns v State*; conviction and death penalty affirmed, 729 So. 2d 203 (MS 1998); motion for post conviction relief, granted in part, denied in part, 813 So. 2d 668, 2001 Miss. LEXIS 252 (MS 2001)

729 So.2d 203:

At page 218: “Ted Burkes, a document examiner with the State Crime Lab, testified that the letters written to Kohlheim were ‘probably prepared’ by Burns and that a comparison of the signatures on the letters and the known sample revealed a ‘strong probability’ that they were written by the same person....”

2001 Miss. LEXIS 252:

To obtain exemplars to compare to two letters admitting to the murder charge, the sheriff told defendant to write a list of names of visitors he wanted. Appeal on basis of deception in obtaining the exemplars was to no avail, since “if there is no Fourth Amendment privacy expectation in handwriting, there is no constitutional violation involved in not being entirely truthful in obtaining it.”

COMMENTARY: An outright lie is described as “not being entirely truthful.” True enough, the entirely deceitful is not entirely truthful. Post-conviction review of this issue was denied.

2004

1067. *Todd v State*, 806 So.2d 1086 (Miss. 2001); denial of post-conviction relief affirmed, 873 So.2d 1040 (Miss. 2004)

806 So.2d 1086:

On pages 1095-96: “On the record before us, we conclude that the trial court did not abuse its discretion in disregarding the testimony of Lillian Hutchison, particularly in light of the trial court’s stated concerns about her qualifications and her own admission that she only compared the letter to photocopies of E.K.’s handwriting rather than originals.” Conviction was upheld.

873 So.2d 1040:

On page 1042: “During post-trial motions, Todd again tried to authenticate the letter purportedly written by E.K., both through the expert testimony of handwriting analyst Lillian Hutchinson who claimed that the letter was certainly written by E.K. and by challenging the testimony of Timmy Hester, Jimmy’s twin brother, who claimed to have faked the letter by tracing other writings of E.K. The State introduced a report of a documents examiner from the Mississippi Crime Lab which stated the opinion that portions of the letter were indicative of tracings and simulation although authorship could not be conclusively determined.”

COMMENTARY: The case report uses both spellings of Lillian’s last name. Todd must have believed the old adage: “If at once you don’t succeed, try and try again.” Except on the second try the “don’t succeed” was even further from success thanks to the State’s document examiner.

1068. *Community Bank of Mississippi v Stuckey*, 52 So. 3d 1179 (MS 2010)

Both parties had a handwriting expert look at two questioned documents, but the two experts looked at different versions of each document:

“¶ 16. The Bank's expert, Grant Sperry, referenced an arbitration agreement Bates-stamped ORG-000098 and ORG-000099. This particular agreement was signed by Mike, Donna, and McAlpin. The signature line lists Donna as ‘Vice President’ and ‘Member’ of Appleridge Estates, LLC. The title ‘Vice President,’ however, is manually crossed out with Donna's initials alongside. Sperry concluded to a reasonable degree of certainty that Donna had signed this particular document, referred to here as the ‘Sperry agreement.’

“¶ 17. In contrast to the ‘Sperry agreement,’ the agreement to which Donna's expert, Robert Foley, referred is Bates-stamped ORG-0000101 and ORG-0000102. It was signed by Mike, Donna, and an individual apparently named Dennis, whose last name is indiscernible [sic]. One signature line merely lists Donna's name, while the other line lists her as ‘Member’ of Appleridge Estates, LLC. Foley found a ‘strong probability’ that Donna had not signed this document, referred to here as the ‘Foley agreement.’

“¶ 18. Sperry and Foley thus rendered opinions based on two different, May 12, 2003, arbitration agreements. It is unclear whether either expert examined the version referenced by the other.

“¶ 19. In her sworn affidavit and in her deposition testimony, Donna denied signing any arbitration agreement on May 12, 2003. The Bank confronted Donna in her deposition about the striking similarities between her actual signature and the signature on page ORG-000099 of the Sperry agreement. She answered, ‘I did not sign that. If a handwriting expert says I did, then I'm wrong, but I did not sign that.... [F]or all I know, they traced it.’

“¶ 20. Because of the evidentiary morass of different versions of the same document together with conflicting expert and deposition testimony, we cannot say that the trial court clearly erred in finding no convincing evidence that Donna had signed any arbitration agreement pertaining to the Appleridge Estates deed of trust.

“¶ 21. As with the arbitration agreements for the Appleridge Estates deed of trust, it appears once again that Donna's and the Bank's respective experts did not review the same document and that they based their opinions on two different documents.

“¶ 22. Donna's expert, Foley, concluded that the arbitration agreement for the June 2003 cattle-business loan, numbered 6803148, was forged by Donna's husband, Mike. The Bank's expert, Sperry, countered that Donna had signed an arbitration agreement dated June 16, 2003. But the agreement that Sperry referenced pertained to a different loan—loan number 6803091. He provided no opinion as to any arbitration agreement associated with the June 2003 cattle-business loan, numbered 6803148, which is the loan that is relevant to this case.

“¶ 23. We cannot say that the trial court clearly erred in finding that Donna did not sign any arbitration agreement for the June 2003 cattle-business loan.”

COMMENTARY: As the Supreme Court of Mississippi said, it was an evidentiary morass, which I printed out at length so you could experience how much of a morass a morass could be.

1069. *Spectrum Oil, LLC v West, et al.*, 34 So. 3d 1213 (MS Ct. App. 2010)

The entirety of the expert testimony that is transcribed in the case report is:

“A forensic document examiner testified about his review of the document. After his testimony, the chancellor gave his version of what the entry said and asked the expert if he agreed. The following exchange transpired:

“THE COURT: Let me give you my version of what it says. You tell me whether you agree with it or not. It says Roy Robert Davis, September the 8th, 1908. Then, under it there is a line and 9 dot 8 dot 1908.

“A. [the forensic document examiner]: That is what I believe. The same thing.

“The expert told the chancellor that the handwriting of the name and of the date 9.8.1908 was made by the same hand.”

COMMENTARY: It is always reassuring when the judge verifies whether or not your explanation was properly understood. Then there are the times when you read a ruling, argument by counsel, case report or some news source, and you do not even recognize the opinion credited to you.

Y. MISSOURI CASES.

1. *Missouri Trial Courts.*

I have found no trial court cases for Missouri.

2. *Missouri Courts of Appeal.*

1993

1070. *Ross v Ford Motor Credit Co.*, 867 SW 2d 546 (MO Ct. App. W. Dist. 1993)

Footnote 8 reads: “A layman could not tell that the signatures of the Rosses had been forged. Ford Motor Credit's handwriting expert, Herman B. Davis, testified that the signature exemplars of Mr. Ross matched the signature of the Rosses on each of several documents, and thus, were penned by the same persons. On the other hand, the Rosses' expert, Avis Odenbaugh, testified that the signatures were not those of the Rosses. The Rosses' expert testified that only an expert could determine whether or not the signatures were forgeries.”

COMMENTARY: And there are other times where only an expert would say a signature is false or genuine, which would surely only by chance agree with the client.

1071. *Anderson, et al., v Wittmeyer, et al.*, 895 SW 2d 595 (MO Ct. App. W. Dist. 1995)

At page 598: “The people who testified to witnessing the will's execution, either saw Cogswell sign his will, or heard him acknowledge to the notary that he had in fact signed the will. In addition, a handwriting expert testified that the individual characteristics of Cogswell's signature could not have been duplicated in the order and sequence that they appear on the will. He also testified that the signature was not a guided hand or forced signature.”

COMMENTARY: For technical precision, when someone helps another, the official signatory, sign the signatory's name by moving the same pen at the same time, the following terms were traditionally used with the exact meanings given:

“Assisted signature” means the movement by the signatory dominates over the helper's movement;

“Guided signature” means the helper's movement dominates over the signatory's movement; and

“Inert hand signature” means all movement is from the helper. Apparently “forced signature” is used for “inert hand signature.”

Modern handwriting experts, who are so inept as to require exact letters and letter combinations to compare, will most likely not have mastered how to discern a writer's graphic motor sequence and its interplay with that of a second writer in the above three instances. When the three terms were proposed at a meeting of ASTM E30.02 , one fellow was most insistent that he could not see how an expert could discern such things, but in any case the terms were not included. How pitiful when someone cannot imagine another being more knowledgeable and competent than oneself. Thus another kudos to those who work to bleed handwriting expertise of long established skills and then mask the practice of dullards with scientifically glib papers on computerized benedictions by researchers who fabricate muddled terminology to express their middling grasp of the fine points about handwriting.

1072. *Stamatiou v El Greco Studios, Inc.*, 898 SW 2d 571 (MO Ct. App. W.D. 1995)

Ms. Stamatiou was unaware a written lease existed for her tenant El Greco, but the Department of Liquor Control had a copy on file. She saw a copy and denied it bore her signature. “At trial, El Greco's expert testified that the signature on the lease appeared to be consistent with other versions of Ms. Stamatiou's signature. The expert also testified that her inability to observe the original copy of the purported lease affected her opinion. She admitted that the signature on the copy of the purported lease could have been a photocopy of a valid signature on another document.”

COMMENTARY: At trial the original lease was found to be non-existent, which was affirmed on appeal. Presumably a copy of the copy on file with the agency was what the expert had to work with and the parties and court had to use.

1073. *State v Grice*, 914 SW 2d 360 (MO Ct. App. E. Dist. 1995)

COMMENTARY: William Storer testified that Defendant had written both a diagram and its accompanying handwritten text.

1996

1074. *McMillan v First State Bank of Joplin*, 935 SW 2d 329 (MO Ct. App. Southern Dist. 1996)

The third and last sentence of the first footnote gives the entirety of the report concerning expert handwriting testimony: “She [plaintiff] also presented testimony from a document examiner that the endorsements on the CD’s were not written by her.”

COMMENTARY: This is another case where the expert’s testimony is shown to be nearly inconsequential in the mind of the courts.

1075. *State v Ralls*, 918 SW 2d 936 (MO Ct. App. W. Dist. 1996)

COMMENTARY: Testimony of a handwriting expert was received.

1076. *State v Wendleton*, 936 S.W.2d 120 (MO Ct. App. S. Dist. 1996)

Wendleton was convicted of passing a bad check. The supermarket clerk, who took the check, identified her and said she was “intoxicated, disoriented, clumsy, and nervous.” At page 122: “Defendant's evidence consisted of her testimony in which she denied writing the check and the testimony of Bruce Scott, a handwriting expert. He testified that the results of his analysis of Defendant's handwriting compared with the signature on the check were inconclusive. He also agreed that intoxication can change the appearance of a person's signature.”

Wendleton sought another handwriting expert who would make a conclusive finding, but the results were not in by the time of appeal, so what the expert might say was entirely speculative.

COMMENTARY: One asserted error on appeal was denial for her to write her signature for the jury so they could make a comparison. However, she was sober at trial, and the signature in question was written while inebriated. No reference is made to a *post litem motam* rule.

1998

1077. *State v Cella, et al.*, 976 SW 2d 543 (MO Ct. App. 1998)

COMMENTARY: The opinion of a handwriting expert was received.

2001

1078. *Kassebaum v Kassebaum*, 42 S.W.3d 685; 2001 Mo. App. LEXIS 170 (Mo. Ct. App. Eastern Dist. 2001)

COMMENTARY: A handwriting expert testified that defendants' signatures on a deed in question were false. Plaintiffs prevailed.

2005

1079. *Boroughf v Bank of America, et al.*, 159 S.W.3d 498; 2005 Mo. App. LEXIS 469 (Mo. Ct. App. Southern Dist. 2005)

Boroughf's handwriting expert, Don Lock, testified he could not give a definite opinion that the signature of decedent was genuine on an amendment to a trust since he only had a photocopy, but there were no unexplainable dissimilarities. The trial judge did not admit the amendment into evidence since it was not shown either that the original was unavailable or that the copy was a true copy of the original.

COMMENTARY: I believe Lock gave a properly qualified opinion out of which plaintiff wanted to make a greater certitude than the expert opinion itself would permit. The court's opinion gives a thorough discussion of how the best evidence rule applies to the photocopy presented and the inadequacies of the legal foundation offered for its admission into evidence.

1080. *Stromberg v Moore, et al.*, 170 S.W.3d 26; 2005 Mo. App. LEXIS 988 (Mo. App. Eastern Dist. 2005); transfer denied, 2005 Mo. LEXIS 380 (Mo., Sept. 20, 2005)

COMMENTARY: A draft with Stromberg's forged signature was deposited in a bank of which he was not a customer. William Storer testified for Stromberg who prevailed.

2006

1081. *In the Estate of George J. Goldschmidt*, 215 S.W.3d 215; 2006 Mo. App. LEXIS 1977 (Mo. Ct. App. Eastern Dist. 2006)

COMMENTARY: A handwriting expert testified that Decedent's signatures establishing a pay-on-demand account were genuine, and that was the court's finding.

2007

1082. *Perkins, et ux., v Dean Machinery Company*, 132 S.W.3d 295; 2004 Mo. App. LEXIS 639 (Mo. Ct. App. Western Dist. 2007); appeal after remand, 2007 Mo. App. LEXIS 27 (Mo. Ct. App. 2007)

Defendant recorded documents perfecting its security interest in a bulldozer it had repaired for plaintiffs, who denied signing the documents. At [*5]: "The Perkins presented a

handwriting expert, William Storer, at trial. n1 The expert determined that the signatures on the documents ‘definitely’ were not written by Lowell Perkins and concluded that the signatures were forgeries. Defendant Dean was precluded from presenting its own expert, although it had intended to do so, because it failed to supplement discovery before trial by identifying the expert. Defendant Dean also waived all cross-examination of the plaintiffs’ expert. Therefore, the testimony of plaintiffs’ expert remained unimpeached, uncontradicted and unchallenged.”

Footnote 1: “The expert had been a document examiner for forty-two years; held Bachelor’s and Master’s of Science degrees; apprenticed with the St. Louis Police Laboratory; was board certified by the American Board of Forensic Document Examiners; had taught at the college level and recently published a college textbook; and has his own private practice, with clients that include the police departments and prosecutors’ offices in St. Louis and Jackson County.”

The report has replies to several arguments by defense against the handwriting evidence. One of these is stated thus by the appeal court: “We fail to see that it is necessary for the Perkins to prove the identity of the exact individual who performed the forgery, nor do we know whether it would even be possible to prove such identity.”

COMMENTARY: The trial judge had denied trial on punitive damages, but the case was reversed and remanded solely on this issue. The assurance of the handwriting expert evidence supported the remand. The case report is recommended reading for the various critiques of defendant’s argument against the cogency of the handwriting evidence.

1083. *Williams v State*, 226 SW 3d 871 (MO Ct. of App. 2007)

COMMENTARY: William Storer identified defendant as having filled out an insurance application.

2009

1084. *Farmers State Bank of Northern Missouri v Huffaker*, 2009 Mo. App. LEXIS 442 (MO App. 2009)

Mrs. Huffaker objected to admission of Mr. DeShon, a lay witness to her handwriting, but this was upheld on appeal. She did no better objecting to the bank’s expert.

“Mrs. Huffaker makes several arguments in support of her claim that the trial court erred in overruling [*10] her objection to the testimony of Mr. Storer. She contends that Mr. Storer’s testimony was inadmissible because: (1) the identification of handwriting is not a proper subject for expert testimony in that the subject is within the knowledge of lay witnesses, (2) there was no evidence that the material he relied on was the type of material that is reasonably relied on by experts in his field, (3) there was no evidence to establish that the exemplars used in Mr. Storer’s comparisons contained Mrs. Huffaker’s signature, and (4) Mr. Storer impermissibly relied on Mr. DeShon’s opinion....”

COMMENTARY: The Court of Appeals said all four objections to Mr. Storer had

been satisfied, and so he was properly permitted to testify. The case report notes that there is legal authority in Missouri for admission of expert handwriting evidence.

2011

1085. *US Bank Nat. Ass'n v Cox*, 341 SW 3d 846 (MO Ct. App. 2011)

COMMENTARY: Opinion of a handwriting expert was received.

2012

1086. *State v Christian*, 364 S.W.3d 797 (MO Ct. App. S.D. 2012)

“A statement and signature by King were submitted to handwriting expert Don Lock (‘Lock’), along with Christian’s signature on a statement that he wrote for the sheriff’s office, and the signature on the deed that purported to be King’s. Lock testified that the signature on the deed purporting to be King’s was ‘nongenuine’; i.e., it had not been made by King. Lock also compared Christian’s known signature to the signature on the deed purporting to be King’s, and he testified that ‘[e]verything points towards Christian as the writer of the nongenuine signature with no unexplainable differences [and] . . . nothing points away from him as a possible writer.’”

COMMENTARY: It must have been a spurious forgery, one in which the forgery is written in the forger’s own genuine style without any effort to imitate the purported writer’s style. Otherwise, there would have been something not pointing to Christian, nor would the signature pass muster at the least inspection by an amateur having access even to one genuine signature by King. Further, on the face of it the case report suggests that only one signature by King was submitted for comparison, and that hardly meets the minimal standards in the discipline. On the other hand, this might be one of the many case reports that leave out what some of us would consider essential information for support of the decision.

A later appeal fared no better for Christian, but it provided opportunity for more commentary that will hopefully be helpful to criminal defense counsel. I treat it separately under 2016.

2013

1087. *Luscombe v Missouri State Board of Nursing*, No. WD75049. (MO Ct. App. 2013)

Don Lock testified that nurse Luscombe had signed for four patients. In cross-examining him, she offered two affidavits by two of the patients that their signatures were authentic. The Board objected on basis of failure to produce the document in advance of the hearing as required. Even if they had been accepted into evidence, the other two signatures were still found by Lock to be forged.

COMMENTARY: It is hard to tell whether someone did a miserable job for the

defense or the defense position was hopeless. For example, two patients testified that their signatures Lock said were false were indeed genuine. Why did no other patients be called to testify about their signatures Lock said were false? Why were affidavits used for the other patients and then failed to be produced beforehand as required?

2016

1088. *Christian v State*, No. SD33998 (Ct. App. MO So. Dist. 2016)

“A handwriting expert, Don Lock ("Lock"), had been provided with the following materials for his examination: a statement and signature penned by King; Movant's signature on a statement he wrote for the sheriff's office; and the signature purported to be King's on the deed. Lock testified that the signature on the deed purporting to be King's was "nongenuine"; i.e., it had not been made by King. Lock also compared Movant's known signature to the signature on the deed purporting to be King's, and he testified that "[e]verything points toward [Movant] as the writer of the nongenuine signature with no unexplainable differences . . . and nothing points away from him as a possible writer."

COMMENTARY: The material listed is far from meeting standards for comparative, genuine writings. There should have been objection and challenge on grounds of both not meeting industry standards and not being scientifically reliable. I wonder where the increasingly employed expression of “nothing points away from” the expert’s opinion came from. It invites questioning on every minute contrary feature. An astute cross-examiner might bring an *in limine* motion to dismiss the proffered expert since, if nothing points away, the expert is not needed since nothing would be beyond a lay person’s skill. Then in final argument before the jury, defense counsel points out every feature that in the least bit points the other way. An expert acting as a confidential consultant to the defense could find such features and explain how to demonstrate them to best effect. The jury would be invited to excise its authority to perform a handwriting examination during deliberations. I submit this would be perfectly ethical for the consultant expert to do no matter how factually guilty a defendant is, since the Constitution requires conviction beyond a reasonable doubt. If the guilty can be convicted on less than constitutionally required evidence, so can the most innocent of innocents.

3. Missouri Supreme Court.

1996

1089. *State v Copeland*, 928 S.W.2d 828 (MO 1996)

At page 846: “The sheriff further testified that he opened and inspected a letter sent from Faye Copeland by United States mail to Ray Copeland [her husband], who was also in the jail. The sheriff made a copy of the letter and gave the copy to the major case squad. Defense counsel objected to the introduction of the letter, based on relevancy. The trial court

admitted the document over that objection. A handwriting expert later testified that, after having examined the exemplars written by defendant, the letter appeared to have been written by the same person who wrote the exemplars.

“The exemplars used are also complained of here as being of suspicious origin. The exemplars were letters sent to the sheriff by defendant.” These exemplar letters had to do with visitors while Defendant was in jail.

COMMENTARY: The loving couple worked together in killing for profit. Every marriage needs a strong bond of common interest. Page 834 lists Defendant’s convictions that are affirmed: “Defendant Faye Copeland was convicted for her complicity in the first degree murders of Paul Cowart, John Freeman, Jimmie Harvey, Dennis Murphy and Wayne Warner.”

1997

1090. *State v Phillips*, 940 S.W.2d 512 (MO 1997)

Conviction for murder was affirmed and sentence of death vacated and remanded. At page 516: “A handwriting expert determined that Plaster did not write the check and that her signature on the check was a forgery. The expert also concluded that Phillips disguised her penmanship in handwriting samples she provided to the police on October 9, 1989.” Plaster was the murder victim. The murder weapon was the target pistol of Phillips’s son.

It was not error to permit the prosecutor to argue inference of guilt from failure to comply with a court order to supply exemplars. At page 518 the argument is quoted:

“If an innocent person completely blameless in this, had nothing to hide, what would they have done? They would have written out these exemplars just like they would on every one of these other checks. What would a guilty person do? Disguise their writing? Try to write differently? Sign their name differently? What did the defendant do with these handwriting exemplars?”

Phillips had voluntarily supplied exemplars early on. Additionally, it was not ineffective assistance of counsel to neglect presenting evidence contrary to the prosecution’s handwriting evidence and similar lawyerly inactivities.

COMMENTARY: From the argument quoted it seems prosecutorial handwriting experts long had samples of Phillips’ genuine checks. Typically, they needed requested exemplars, presumably with exact letters and letter combinations, to compare since they seemingly cannot compare handwriting as the fruit of a dynamic activity, the very fundamental cause that makes it identifiable. One can safely assume merely structural comparisons are being made by mentalities limited to exact same letters and letter combinations. Another issue this case suggests is that compelled exemplars at dictation or direction of an opposing representative or expert seem to be presented in court minus any instructions on how they were to be executed. I suspect that most testimony that exemplars were disguised is because the instruction was to write in a way that would be a disguise for the writer. No compelled or requested exemplar should be permitted in as evidence at trial

minus the entirety of the precise instructions given to the writer. To be even more radically rational and fairminded, I urge that during the taking of such exemplars, the writer should be permitted to have one's own attorney or investigator present to take notes and assure the proper behavior of opposing parties, especially prosecutorial attorneys and experts.

I offer in this text much critical commentary on my field of forensic handwriting identification, the primary work in document examination. Lest I neglect honoring those in the discipline who are fine at it, I share this story. I acted as confidential consultant to an attorney in a civil case wherein his testifying expert was from the local sheriff's forensic lab. Talking afterwards with the attorney for whom we were both working, he said something I agreed with wholeheartedly. In characterizing her work product he said: "She was beyond excellence." Though of a rare breed of expertise, she is by no means the sole document examiner whom I have encountered in my researches and experience who achieved excellence or who never abandoned the striving after excellence.

1999

1091. *State v Armentrout*, 8 S.W.3d 99; 1999 Mo. LEXIS 80 (Mo. 1999); certiorari denied, 2000 U.S. LEXIS 3350 (US 2000)

"First, Appellant claims that the trial court erred by allowing the state's handwriting expert, William Storer, to testify in the guilt phase that a tremor was evident in some of the victim's last signatures. Appellant argues that the reference to the tremor (supposedly indicating nervousness or fright) should have been excluded because the state failed to disclose it before trial. Appellant acknowledges, however, that he did not raise this claim during his trial and that it was raised for the first time in his motion for new [*28] trial. As noted, to obtain plain error relief, Appellant must demonstrate manifest injustice or a miscarriage of justice. *Rule 30.20*. Here, appellant has suffered no manifest injustice because he has not shown that earlier discovery would have caused him to act differently and would have affected the outcome of his trial. *State v. Mease*, 842 S.W.2d 98, 108 (Mo. banc 1992) ('the focus of a denial of discovery is whether there is a reasonable likelihood that denial of discovery affected the result of the trial.'), *cert. denied*, 508 U.S. 918, 124 L. Ed. 2d 269, 113 S. Ct. 2363. The point is denied."

COMMENTARY: Defendant had represented himself at trial, and his appeal could be viewed as a series of complaints that he had had inadequate legal representation.

Z. MONTANA CASES.

1. *Montana trial courts.*

2000

1092. *Maxwell v Hoven, et al.*, 2000 ML 3878, 2000 Mont. Dist. LEXIS 1606 (Cascade Co. Mont. 2000)

The following is copied from the case report:

FINDINGS OF FACT

1. In January of 1998, Plaintiff Maxwell delivered his vehicle, a 1989 Hyundai Excel (“the vehicle”), to Defendant Curtis Olsen, sales manager for Defendant Hoven d/b/a Aladdin Auto Sales (“Aladdin”) for Aladdin to sell on consignment.
5. Upon checking with the Department of Motor Vehicles, Plaintiff learned that the vehicle had been sold and title transferred utilizing a forgery of Plaintiff’s signature. The Plaintiff’s purported signature includes a verification by notary Mitch Posey, defendant herein.
13. Steven Maxwell’s signature on the title is certified as Mr. Maxwell’s by notary signature of Mitch Posey, notary public....
14. The signature of Mr. Maxwell on the Certificate of Title does not resemble in the least the signature on the consignment agreement. It is clear that Mr. Maxwell’s signature was forged with no effort to make it appear to be his actual signature.
15. The signature of Mr. Posey, on the Certificate of Title, appears to be in many ways similar to the signature of Mr. Posey on his notary public bond, which he verified to be his signature.
22. Even though Posey did not raise the affirmative defense in his pleadings as required by Rule 8(c), M.R.Civ.P., I chose to allow him to assert that defense at trial.
25. Posey’s handwriting expert, Ron Ashabraner, raised questions about [Posey’s] signature’s authenticity, and found what he believed to be some significant differences between his signature and that on the document. He was unable to testify with any certainty or by a preponderance of the evidence, that the signature is or is not Mr. Posey’s, because he claims the characteristic features of the signature would only be revealed by the original document and would not be apparent on this photocopy.
26. Posey did not meet his burden of proving his signature was forged.
28. Plaintiff Maxwell met his burden of proving by a preponderance that Posey notarized the signature purporting to be Maxwell’s signature on the Certificate of Title and that Maxwell’s signature had been forged.

COMMENTARY: I enjoyed this little melodrama.

2. *Montana Supreme Court.*

Montana's Supreme Court is its sole court of appeal.

2001

1093. *State v White*, 2001 MT 149, 306 MT 58, 30 P3 340, 2001 MT LEXIS 304 (MT 2001)

White was convicted for the felony forgery of three checks. Among other bases for a claim of ineffective assistance of counsel, appellant White listed her trial counsel's failure to call a handwriting expert to rebut the State's expert. At [*12] the Supreme Court of Montana explains why it rejects this and other claims of ineffective assistance: "We also have a record that cannot fully explain why a rebuttal witness was not called to counter the State's handwriting expert--where perhaps counsel's chosen tactic was simply to rely on cross-examination. We hold that the foregoing claimed deficiencies are categorically non-record based, and therefore cannot be reviewed on direct appeal."

COMMENTARY: The decision seems to imply that, as long as trial counsel who is guilty of the most ineffective assistance avoids indicating on the record the reason for every ineffective non-action, the assumption is that there was a most effective reason for the ineffective assistance which thus becomes sufficiently effective.

State handwriting expert at trial was Beverly Medved, member of American Board of Forensic Examiners, but the report does not mention Medved's name.

2005

1094. *Garrett, F/k/a White, v State*, 2005 MT 197, 328 Mont. 165, 119 P.3d 55, 2005 Mont. LEXIS 352 (Mont. 2005); affirming *State v White*, 2001 MT 149, 306 Mont. 58, 30 P.3d 340, 2001 Mont. LEXIS 304 (Mont. 2001)

"Garrett argues that Gilligan's representation was ineffective because he failed to retain a handwriting expert for the defense. Garrett notes that she urged Gilligan to hire a defense expert and offered to advance \$1,500 to obtain one. Garrett also asserts that Gilligan failed to interview the State's handwriting expert Beverly Medved (Medved). Garrett contends that Gilligan's cross-examination was 'not effective enough' to undermine Medved's opinion, which prejudiced [*10] the outcome of the trial. The State replies that Gilligan prepared for Medved's testimony based upon Medved's written report, anticipated her testimony, and effectively cross-examined Medved at trial by limiting the scope of her testimony to certain exhibits.

"In her civil deposition, Garrett admitted to making alterations to the documents at issue, and she did not deny that alterations were made in her criminal trial. Thus, both sides acknowledged the alterations by Garrett, and, therefore, a handwriting expert was not needed to establish that Garrett had altered the documents. Moreover, there is no evidence in the record to suggest that Gilligan could have engaged an expert with contrary opinions to the State's expert. Consequently, we conclude that it is not established that Gilligan's

performance fell ‘below the objective standard of reasonableness.’ *Lucero*, P 15.”

COMMENTARY: One wonders at times whether appeal attorneys take their own arguments seriously. Even if a handwriting expert were the world’s premier hireling, he would hardly testify that his own client is mistaken when confessing to fraudulently altering documents. At least such facetious bases for appeals contribute to keeping otherwise idle appeal attorneys gainfully employed, being their gain and the taxpayers’ drain.

1095. *State v Clifford*, 2005 MT 219, 328 Mont. 300, 121 P.3d 489, 2005 Mont. LEXIS 385 (Mont. 2005); 2005 Mon. 219, 2005 Mont. LEXIS 421 (2005); rehearing denied, 2005 Mont. LEXIS 425 (2005); post conviction review denied, *Clifford v State*, 2006 Mont. Dist. LEXIS 264 (2006)

Conviction for writing letters to tamper with or fabricate evidence and for writing threatening letters was affirmed. Before discussing the decision by the Montana Supreme Court, a survey of the procedural history will show the handwriting issues and how protracted the case was.

At 2001 ML 3671, 2001 Mont. Dist LEXIS 3091, it is reported that Howard C. Riles and Lloyd Cunningham were designated defense document examiners. The latter said he needed all documents in his lab at once, so the trial court ordered the State to make them available.

At 2002 ML 708, 2002 Mont. Dist. LEXIS 2920, defense asks the court to order the State to search personnel files of its witnesses. The order is granted except for James A. Blanco, designated document examiner for the State, since his employment was with the Federal Government and the State had no access to those personnel records.

At 2002 ML 710, 2002 Mont. Dist. LEXIS 2922, defense requests a *Daubert/Kumho* hearing on admissibility of James A. Blanco. In Montana, *Daubert* applies only to novel scientific evidence, so the request is denied.

At 2002 ML 711, 2002 Mont. Dist. LEXIS 2933, defense moves to redact Blanco’s opinions and conclusions from the affidavit and the information be dismissed. For the same reasons why the *Daubert* hearing was denied the motion to redact is denied and, therefore, the motion to dismiss.

2002 ML 712, 2002 Mont. Dist. LEXIS 2924, defense moves for reconsideration of order to provide handwriting exemplars. The deposition of Blanco was permitted wherein he was asked about having any exemplars. The prosecutor, therefore, sought an order for more exemplars to be used at trial because of the anticipated challenge. Motion for reconsideration was denied.

At 2002 ML 2421, 2002 Mont. Dist. LEXIS 1999, defense motion *in limine* to exclude Blanco’s testimony is denied for reasons given previously on similar motions.

At 2002 ML 2571, 2002 Mont. Dist. LEXIS 3002, motions were made to continue and to dismiss because defense did not have information on how Blanco arrived at his opinions. The State supplied them with all his reports, and when he was deposed defense examiner still had the documents so they were unavailable to Blanco. The court found that

Blanco's reports supplied all required information. Other reasons were given for the motions, so trial was ordered to proceed as scheduled.

And that brings us to the decision by the Montana Supreme Court of 2005. In March 2000, William Cordes, to whom "the United States Secret Service had given him questioned-documents-examination training," was assigned to investigate documents in the case. He developed a good amount of evidence against defendants.

Blanco was first contacted by the Lewis and Clark County Sheriff's Office in December 1998. He was one of about 150 certified by ABFDE, "the only certification recognized by crime laboratories in the majority of governmental agencies.... In his first of five reports, Blanco could neither identify nor eliminate" defendants as writers of the anonymous letters. With more documents, he identified Cheryl Clifford as the writer of some letters and envelopes. At his deposition Blanco "was not prepared to explain every detail of every comparison between the letters." Seemingly he did much better at trial.

Five of seven issues raised on appeal directly related to handwriting evidence.

At [*10]: "In presenting her defense, Cheryl intended to call Mark Denbeaux as a handwriting expert. The State objected, and the District Court excluded him." She wanted him to criticize handwriting analysis evidence. He was not a handwriting expert, the district court was well within its discretion, and Cheryl could have developed the same challenge through cross-examination of her own handwriting expert.

No *Daubert/Kumho Tire* hearing was required since in Montana *Daubert* applies only to novel scientific evidence. The expert may give an opinion as to the ultimate issue, namely who wrote the letters in question and not be restricted to explaining similarities and differences. The issue as to Blanco's qualifications was not preserved for appeal since there was no objection at trial. The Court did not consider the claim that Blanco's opinion did not provide probable cause to support the information because the claim was nothing more than an assertion. The defense was supplied with ample material regarding Blanco's opinion and its bases, so there was no error in denying continuance or dismissal. Cheryl fails to develop argument or cite authority that it was error to deny a continuance so that Lloyd Cunningham, who was recovering from an illness, could testify in person rather than by video deposition.

Cheryl claims error because she was not permitted to present proof that someone else wrote the anonymous letters. The government claimed it would be "unfair prejudice" to it, but that is only possible "when the evidence tends to make the jury more likely to find a defendant not guilty *despite* the proof beyond a reasonable doubt.... By proving that someone else committed the crime, reverse 404(b) evidence is not likely to generate that risk of jury infidelity, and [*24] thus does not generate unfair prejudice." It would have been inadmissible propensity evidence.

COMMENTARY: At Blanco's deposition, the defense attorney seemed to have given away challenges to be made at trial. That is always a major tactical error. Additionally, defense was holding on to documents Blanco needed to provide some information at the deposition. Another poor tactic by defense attorney. Calling Denbeaux to show weakness of expert handwriting evidence would have weakened Cunningham's

testimony as much as Blanco's, so barring Denbeaux prevented self-defeating defense tactics. Since only 150 or so "experts" were then certified by ABFDE, the situation of "major" agencies only recognizing ABFDE certification seems to be a case of ABFDE people only recognizing themselves, given the vast extent of the profession in North America. Neither the government investigator, Cordes, nor defense expert Cunningham hold this self-recognized certification, while Riles does. So the "experts" in the case were split 50/50 unless one considers Denbeaux one of the experts, then the allegedly "only recognized" experts are in a minority, as they are at large among the several hundreds of court qualified document examiners in North America.

One might explore other ironies in this case, but for our purposes admissibility is soundly supported by testimony by both "recognized" and "unrecognized" handwriting experts, while once more the expert against handwriting expertise is dismissed for not being a handwriting expert. As I have stated previously and shall surely state again, only a handwriting expert with a special competence can assist an attorney in exposing incompetent handwriting expertise.

2009

1096. *State v Dewitz*, 212 P.3d 1040, 2009 MT 202, 2009 Mont. LEXIS 225 (MT 2009)

Detective Scott Brodie, who was admittedly not a handwriting expert, was permitted to express opinion as to handwriting. In *State v. Fleming*, 225 Mont. 48, 730 P.2d 1178 (1987), it was ruled that a non-expert may give an opinion by comparison with exemplars if, and only if, the non-expert was previously familiar with the person's handwriting, a knowledge not acquired relative to litigation. Permitting the opinion was error but harmless.

COMMENTARY: If the opinion would have done defendant no harm, the prosecutor would have never presented it and fought for its admissibility.

2013

1097. *Willis v Fertterer, et al.*, 2013 MT 282 (MT 2013)

COMMENTARY: One of Willis' complaints on appeal was that the trial judge did not accept the opinion of his handwriting expert. The decision on appeal explains why the judge's finding contrary to the expert was not erroneous. I wonder whether or not appeal attorneys study these decisions in order to cover next time all the reasons why appeals similar to theirs had been rejected in the past. From the repetitive nature of these decisions, apparently not.

AA. NEBRASKA CASES.

1. *Nebraska Trial Courts.*

I have found no Nebraska trial court cases.

2. *Nebraska Courts of Appeal.*

1998

1098. *State v Ebert*, Nebraska Court of Appeals, Filed November 3, 1998, Nos. A-97-821, A-97-822.

“Additionally at trial, Robert Citta, a latent-fingerprint examiner and handwriting analyst...compared Ebert’s handwriting to that on the checks and concluded that the handwriting on the three checks was not Ebert’s. However, he determined that it was possible that the handwriting on the three checks was Matt Jones’.” The handwriting evidence was not assigned as error on appeal.

COMMENTARY: Those who do not know how genuine knowledge works upon a reliable methodology might think the expert in this case was inept. However, a true expert knows the limitations of the discipline as well as personal limitations. That in this case the prosecution introduced at least partially exculpatory evidence speaks well for both the prosecutor and the expert. In any case, it seems all parties found the expertise sound enough not to be challenged.

1999

1099. *Darnall and Darnall v Petersen and Petersen*, 8 Neb. App. 185; 592 N.W.2d 505, 1999 Neb. App. LEXIS 88, 39 U.C.C. Rep. Serv. 2d (Callaghan) 140 (Neb. App. 1999)

“Albert Lyter, III, a forensic chemist, was called to testify on behalf of the Darnalls. Lyter has a bachelor’s degree in chemistry and biology and a master’s degree in forensic science. Prior to opening his own business in 1981, Lyter worked for the U.S. Treasury Department in the Bureau of Alcohol, Tobacco, and Firearms laboratory.

“Lyter conducted both physical examinations and chemical tests on the promissory note. Based upon his physical examinations of the document and the chemical tests performed, Lyter opined that the terms of the document were all written during the ‘same time period.’

“During cross-examination, Lyter testified that depending on the ink, ‘same time period’ could be a matter of days. Lyter further acknowledged that if the same pen was used to write the initial terms of the [*6] document and then later used to add the additional terms, then, depending on the circumstances, there might be a situation where he could not detect an alteration made 6 months later. However, he reiterated that based upon the fact that the same ink was used and the fact that he found no differences in the relative dryness of the

ink, ‘the simplest conclusion is that they were all done at the same time.’

“Andrew Bradley, a document examiner, was next called to testify. Bradley worked as a document examiner for the Arapahoe County Sheriffs Department from 1968 through 1993. Bradley has also done work for the Secret Service and the Federal Bureau of Investigation. Bradley examined the handwriting on the promissory note using microscopic equipment.

“Based upon a reasonable degree of forensic certainty, Bradley opined that all of the terms of the promissory note were written by the same person at the same time. During cross-examination Bradley admitted that he could not rule out that some of the terms were written at a different time but stated that based upon his experience and training, he believed that they were written at the same time.”

The Trial Court found contrary testimony more credible and this finding was upheld by the Court of Appeals, that the entries in question were added after the document was signed and without the authority of Ms. Petersen. However, since the addition was not fraudulent, it was a Pyrrhic victory for Ms. Petersen.

COMMENTARY: No indication is given for the bases why both experts thought that plaintiffs’ contention that all entries were made at the same time was more likely than defendants’ contention that some were made days later. It seems to me that opinions ultimately based on the expert’s experience and training are not based on any facts originating from the instant case.

2003

1100. *Freimuth v Principal Mutual Life Insurance Company*, 2003 Neb. App. LEXIS 245 (Neb. Ct. App. 2003)

COMMENTARY: Plaintiff called Sylvia Kessler, a handwriting expert, to testify.

2004

1101. *State v Ruffin*, 2004 Neb. App. LEXIS 335 (Neb. App. 2004)

At [*15]: “Ruffin asserts that the district court abused its discretion in granting the State’s motion to endorse an additional witness. Specifically, Ruffin complains that the court erred in granting the State’s motion to endorse Pamela Zilly of the Nebraska State Patrol crime laboratory, an expert in handwriting analysis, as a witness only 13 days prior to trial.” By rule witnesses in criminal trials should be disclosed 30 days prior to start of the guilt phase. However, no continuance was requested nor objection made by Ruffin.

Ruffin filed a *Daubert* motion: “The district court heard Ruffin’s motion *in limine* on January 6, 2004, outside the presence of the jury. The State presented testimony from Zilly concerning handwriting analysis in general and her analysis of Ruffin’s handwriting in particular. [*19] At the conclusion of Zilly’s hearing testimony, the court found that the State had met its burden of proof concerning the scientific validity of the handwriting

analysis and denied Ruffin's motion. At trial, the State subsequently presented testimony from Zilly concerning her analysis of Ruffin's handwriting and her conclusions therefrom. Ruffin did not object to any of Zilly's trial testimony or to any of the exhibits received into evidence during her testimony concerning her handwriting analysis."

COMMENTARY: Zilly must have prepared well and explained thoroughly to triumph over the challenge to her reliability and to the validity of her expertise. Unfortunate this is not a published case and does not cite relevant published cases. The poor performance of defense counsel is credited to Ruffin personally, as if he had conducted his own defense. However, if he had appealed on basis of inadequate assistance of counsel, typically the bungling performance would most likely be credited to shrewd trial tactics or strategy.

3. Nebraska Supreme Court.

1993

1102. *State v Smith*, 494 NW 2d 126, 242 Neb. 202 (Neb. 1993)

Handwriting expert testimony was received that, since only part of one word was available for examination, Defendant could be neither identified nor eliminated as the writer.

COMMENTARY: This is the kind of thing that should be stipulated to and save us all a lot of time and costs.

1996

1103. *Kirksey v State*, 923 P. 2d 1102 (NV 1996)

COMMENTARY: The opinion of a handwriting expert was received.

2002

1104. *Hradecky v State*, 264 Neb 771, 652 NW2 277, 2002 Neb LEXIS 215 (Neb 2002)

This is two cases of husband and wife each appealing from judgment in the trial court. At page [*9], one point of appeal asserted was "multiple and cumulative errors that resulted in the denial of a fair trial," the last of seven alleged instances being: "(g) refusing to permit the Hradeckys to cross-examine a State expert on her adherence to the discipline of graphology." There was no error in that refusal by the Trial Court.

At [*11]: "The February 25, 1998, entry from Sterling's work diary was admitted as an exhibit at trial. The diary includes an entry that Sterling closed the eastbound 1-80 entrance at Kimball at 8:30 a.m., although the '8' is written very boldly and there appears to be text underneath it. Both parties offered expert testimony on the issue of whether the ink used to make the '8' was consistent with other ink on the page and what the text underlying the '8' was. The Hradeckys' expert testified that different ink was used to make the '8' and that the underlying text was the number 10. The State's expert agreed that different ink was

used on the '8' but found that different ink was also used on other entries in the diary on the same day. The State's expert disagreed that the underlying text was a 10 and opined that she could not determine what the text represented." The Trial Court found that the husband had driven onto a closed roadway during a blizzard and thus was grossly negligent.

COMMENTARY: No challenge to the reliability of the expert evidence is reported. The state employed an expert with background in graphology, which was irrelevant to expertise in questioned documents, hence cross-examination about it was barred. The only handwriting opinion reported is that of decipherment of the underlying writing.

2007

1105. *State v Wabashaw*, 274 Neb. 394, 740 N.W.2d 583, 2007 Neb. LEXIS 148 (Neb. 2007)

The State's handwriting expert compared a handwritten confession that Wabashaw denied writing with more than 26 known writings by Wabashaw. The expert concluded that Wabashaw wrote the confession. Wabashaw claimed ineffective assistance of counsel because his attorney did not engage the expert for which the trial court allowed funds, but there was insufficient information to determine that.

COMMENTARY: A case of routine neglect of an all-paid and potentially effective defensive move, which neglect is ruled once more not at all obviously ineffective, as if neglect of an effective investigation on behalf of a criminal defendant were by presumption of law effective.

1106. *Worth v Kolbeck*, 728 NW 2d 282, 273 Neb. 163 (Neb. 2007)

Document examiner, Marlin Rauscher, testified to altered numbers in a medical record. However, the pages allegedly altered were not designated nor included in papers submitted upon appeal nor was a record of the relevant testimony submitted.

COMMENTARY: That is almost as bad as showing up to be married but failing to arrange a similar appearance for one's beloved.

2015

1107. *State v Oliveira-Coutinho*, 291 Neb. 294 (2015)

Defendant objected to testimony of Charles Eggleston a handwriting expert for the State. After a *Daubert/Schafersman* hearing he was found reliable and admissible. In *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), the Nebraska Supreme Court ruled that *Daubert* not *Frye* should henceforth be followed in Nebraska.

COMMENTARY: Defense cited *U.S. v Rutherford*, 104 F. Supp. 2d 1190 (D. Neb. 2000), as authority to keep Eggleston out, but subsequent court decisions weigh the other way.

BB. NEVADA CASES.

1. Nevada Trial Courts.

2004

1108. *State v Warren*, County No. 02F15712X, Metro No. 020828-0764, 2004.

From a list circulated by SWGDOC, at a *Daubert* hearing, the document examiner was found admissible while Saks was ruled inadmissible.

2. Nevada Supreme Court.

Its Supreme Court is Nevada's only court of appeal.

1995

1109. *Callier v Warden*, 901 P. 2d 619 (NV 1995)

COMMENTARY: The testimony of a handwriting expert was received.

2000

1110. *Evans, as Special Administrator of the Estate of Elfreda A. Gardner, v Dean Witter, et al.*, 116 NV 598, 5 P3 11043, 2000 Nev LEXIS 86, 116 NV Adv Rep 17 (NV 2000)

"Donald Brooks, manager of Dean Witter's Stateline office, testified that on October 13, 1989, he and Jack Gardner witnessed Elfreda affix her signature to all of the opening account documents. Brooks also testified that he notarized Elfreda's [*6] signatures. However, two handwriting experts testified at trial that the signatures were not those of Elfreda, and that three different inks were used to execute the documents."

COMMENTARY: The jury believed the experts, and Dean Witter had to pay substantially.

1111. *Mulder v State*, 116 Nev. 1, 992 P.2d 845, 2000 Nev LEXIS 1 (NV 2000); certiorari denied, 2000 U.S. LEXIS 5432 (US 2000)

The "Case Details," which are not the product of the Court, states the expert's name as Howard Doulder, and "Discipline" as "Fingerprint Analysis, Forensic Doc. Examin., Handwriting Analysis." However, it was someone whose work is 90% document examination and 10% fingerprints being presented at trial by defendant/appellant as a fingerprint expert to rebut FBI identification of defendant's prints on duct tape. The Trial Judge found Doulder did not qualify as fingerprint expert but let him testify anyway. Appellant said it was error for the judge to say Doulder was not an expert since it reduced likelihood his testimony could raise reasonable doubt with jury. However, error was found because, having ruled him not an expert, the Trial Court let him give expert testimony. The

error was in defendant's favor so the error was harmless.

COMMENTARY: This case was retrieved because the source citing it listed it as a *Daubert* handwriting case. It is not, since no handwriting evidence was offered. Thus it is appropriate to repeat the caution about relying on a source's representation of what a case report says without checking out the case report itself. The case offers a salutary warning about stepping outside one's proper expertise.

2003

1112. *State v Bennett*, 119 Nev. 589, 81 P.3d 1, 2003 Nev. LEXIS 83, 119 Nev. Adv. Rep. 63 (Nev. 2003); writ of *mandamus* granted, *Bennett v Eighth Judicial Dist. Court of Nev.*, 121 P.3d 605, 2005 Nev. LEXIS 94 (2005); previously, motion on post-conviction petition, *Bennett v State*, 106 Nev. 135, 787 P.2d 797, 1990 Nev. LEXIS 21 (1990)

At [*7], during the penalty stage: "The State also presented testimony of the officers who had executed the search warrants in the instant case and recovered witchcraft books, handwritten poetry or song lyrics discussing death and killing, and heavy metal music cassettes. A handwriting expert testified that the poetry or lyrics were in Bennett's handwriting. He read some of the writings, such as 'As I kill and kill again.'"

COMMENTARY: During a robbery, Bennett shot and killed the store clerk. He was granted a new hearing on his sentence of death.

2004

1113. *Kaczmarek v State*, 91 P. 3d 16 (NV 2004)

COMMENTARY: A probable opinion of a document examiner was received as to who signed a pawn ticket.

2005

1114. *Jezdik v State*, 110 P.3d 1058 (NV 2005)

Jezdik was accused of identity theft and fraudulent use of a credit card, the victim of identity theft being his girl friend. On appeal he claimed admission of handwriting expert evidence from a non-expert was error.

"At trial, Detective Woosnam conducted a lay comparison of Jezdik's signature with the Citibank receipts. While Detective Woosnam admitted he was not an expert, he testified that 'based on general experience ... [t]he signature on the receipts [is] similar in appearance with the signature that appeared on the copy of the voluntary statement ... obtained from [Michael] Jezdik.' Based on this similarity, Woosnam testified that it was his opinion 'that the signatures are from the same person, [Michael] Jezdik.'

"Gene Olewinski, a detective in the LVMPD financial crimes unit, also participated in the investigation concerning Jezdik. Olewinski testified at trial that, as part of the

investigation, he required Jezdik to execute exemplar signatures for expert handwriting analysis. Attempts to make comparisons failed due to the type and quality of the signatures on the receipt copies.”

The claim of ineffective assistance of counsel in not objecting to all this would be left to a post-conviction review.

COMMENTARY: In one criminal case I testified that charge slips at an up-scale men’s clothier’s that defendant was accused of writing were so scribbled that the writer was impossible to identify. In rebuttal the prosecutor presented the testimony of the county’s ABFDE certified expert. She said my exemplars, endorsements on backs of cancelled checks, were inappropriate for comparison with the charge slips since they were different things. She missed the part where I said the questioned signatures were unidentifiable so I never made a comparison, although she was quite incorrect that comparison of signatures on checks and charge slips was *per se* impossible for purposes of identification.

When she finished direct testimony, the judge invited cross-examination. Defense counsel and I looked at each other, and I had the delight of saying first what we both thought, “She agrees with us; they can’t convict the guy.” Defense counsel said, “No questions, your Honor.” There was no eyewitness who could identify defendant as the purchaser of the goods gotten by the fraudulent charge slips. The jury acquitted.

BB2. NEW HAMPSHIRE CASES.

1. *New Hampshire Trial Courts.*

I have no trial court cases for New Hampshire.

2. *New Hampshire Supreme Court.*

Its Supreme Court is New Hampshire’s sole court of appeal.

1994

1115. *State v Davis a/k/a Erico Davias*, 139 N.H. 185 (NH 1994)

At page 192: “A handwriting expert from the Federal Bureau of Investigation testified that in his opinion the endorsements on the stolen checks were made by the defendant. The checks were deposited into the defendant’s account....”

COMMENTARY: This serves as a reminder that, however conscientious we are in trying to find all of anything, we will miss something, and this something is the first and only New Hampshire case in this compilation.

CC. NEW JERSEY CASES.

1. *New Jersey Trial Courts.*

I have found no trial court cases for New Jersey.

2. *New Jersey Appellate Division.*

2002

1116. *State v Medina*, 793 A.2d 68, 349 N.J. Super. 108 (NJ Super. Ct. App. Div. 2002)

Medina, a police officer, was convicted of obstruction of justice and theft of an item worth less than \$200, a Marlin shotgun turned in during an amnesty program. The evidence that the shotgun was missing from inventory is given at page 73:

“State Police Sergeant Daniel Poland, an expert in the field of document examination, inspected the precinct's log sheet for March 6, 1998, and determined from laboratory analyses that the original writings had been altered with correction fluid. Using an infrared film process, the witness determined that the words ‘Marlin’ and ‘twelve gauge’ had been covered with correction fluid.

“Sergeant Sheila Fitts of the Newark Police Department's Internal Affairs Bureau testified that Newark police officers are trained not to use correction fluid. They are instead directed to draw a line through incorrect entries so that the original mistake remains legible and to write the correct information on another line.”

COMMENTARY: Among other complaints on appeal, Medina complained about reduction of charges against him from felonies to personal offenses thus depriving him of a jury trial. He was deprived of a chance for a prison term if a jury should convict him versus a sentence of only a one-year probation and loss of his police job, both of which, I do believe, would have been his with a prison sentence, one immediately and the other upon release from prison. As to his other points of error, the court of appeals was not persuaded.

2006

1117. *Fitzgerald v Stanley Roberts, Inc.*, 186 N.J. 286, 895 A.2d 405, 2006 N.J. LEXIS 391, 98 Fair Empl. Prac. Cas. (BNA) 80 (NJ 2006)

“We turn finally to the handwriting analysis issue. Leman Lane denied that he ever signed plaintiff's disability insurance forms although plaintiff and her mother testified that they saw him sign them. Defendants sought to admit the testimony of John Paul Osborn, a handwriting expert, who would have testified that Lane's signatures on plaintiff's insurance forms were probably forged (he could not testify that they were definitively forged because he did not have the original writings to compare). The trial judge excluded that testimony on the ground that it would take an excessive amount of time, and would result in a ‘little forgery trial within the sexual discrimination trial.’ We defer to the trial judge's exercise of

discretion in excluding the testimony under *N.J.R.E. 403* [*62] . *Guenther*, supra, 181 N.J. at 155, 854 A.2d 308 (stating trial courts well-qualified to determine when admission of evidence will result in ‘mini-trial’ and to bar its admission due to confusion or waste of time). However, if this issue arises on remand, the trial judge should require and consider complete proofs to inform the balancing determination required under *N.J.R.E. 403*.”

COMMENTARY: I wonder how the myth became almost universal that a copy prevents a definite finding of falsity in handwriting. The rule as stated by Ordway Hilton and others is that even one significant difference that cannot be reasonably explained can, if sufficiently cogent, definitely prove falsity. If the difference(s) relied on cannot be credited to the copying process, the fact that one only has a copy cannot prevent a definite finding of falsity. This view is supported by *FBI Law Enforcement Bulletin*, 36:23-24, Feb. 1967, “Document examination from a photocopy.” Since then copiers have gotten much better, and recent research has shown more than 90% accuracy in observations based solely on photocopies.

2007

1118. *Lyle Carlstrom Associates, Inc. v Lyle, et al.*, 2007 N.J. Super. Unpub. LEXIS 676 (Super. NJ App. 2007)

At [*2]: “In 1995, Carlstrom’s brother left LCA and took some of its business with him. As a result, beginning in 1996, LCA required all of its employees, including defendant, to sign a non-compete agreement. Although defendant denied signing such an agreement, a photocopy bearing his purported signature was produced at trial, a handwriting expert testified the signature was defendant’s, and the jury found that he signed the agreement.”

COMMENTARY: Happily this is not a routine repetition of the fallacy regarding copies given in the previous item.

1119. *State v Kuchera*, 2007 N.J. Super. Unpub. LEXIS 1769 (Suer. NJ App. 2007); certification granted in part 195 N.J. 417, 949 A.2d 846, 2008 N.J. LEXIS 427 (2008); affirmed in part and modified in part, 198 N.J. 482, 969 A.2d 1052, 2009 N.J. LEXIS 88 (N.J., Mar. 17, 2009)

At [*22]: “William Davis, a forensic document examiner employed by the Department of Criminal Justice testified as a handwriting expert. Davis compared the writing on the map to defendant’s handwriting and ‘was unable to make a determination as to authorship’ because of the limited amount of writing on the map and the ‘fact that [the examined map] was a copied document.’ Davis concluded ‘that [defendant] was unable to be identified or eliminated as being the author of [the writing on the map].’”

COMMENTARY: I always wonder about the wisdom of such expert testimony when it can only provide an arguing point for the defense, unless defense counsel called him for that purpose. This also seems to compromise between the impossibility that copies cause in *Fitzgerald v Stanley Roberts, Inc.*, and the facility enjoyed with copies in *Lyle Carlstrom*

Associates, Inc. v Lyle, et al. Now any judge can enjoy any precedent, except unfortunately the happiest of the three, *Lyle Carlstrom Associates, Inc. v Lyle, et al.*, is unpublished.

1120. *State v Violante*, 2007 N.J. Super. Unpub. LEXIS 2355 (NJ Super. App. 2007)

“As expected, Adasczik testified that the signature on the title was not hers. Defendant did not testify. However, on cross-examination of Adasczik, defense counsel elicited from Adasczik that when Adasczik asked defendant how he transferred the title defendant said, ‘you signed it over,’ to which Adasczik said, ‘no, I didn’t. I would have remembered that,’ to which defendant replied, ‘no, you just forgot.’

“This was the theme of the defense. Indeed, the defense attempted to prove that Adasczik had a memory problem, and the defense produced a handwriting expert in an effort to prove that the signature on the title was Adasczik’s.

“In rebuttal, the State produced a handwriting expert who contradicted the defense expert.

“By its verdict, the jury obviously believed that the purported signature of Adasczik on the title was a forgery and that defendant presented the forged document to the Division of Motor Vehicles. These acts constituted forgery and uttering a forged document, and by surreptitiously transferring legal title to the vehicle [*7] into his name, defendant also committed theft by deception.”

COMMENTARY: If one is going to pour live coals on one’s own head, one might as well do a good job of it.

2009

1121. *In the Matter of Gonzalez*, No. A-0644-07T2 (NJ Superior Ct. App. Div. 2009)

COMMENTARY: Document examiner William Davis testified that a police officer had probably signed another officer’s name to citations. Conviction for submitting a false police report was affirmed.

1122. *State v Caines*, 2009 N.J. Super. Unpub. LEXIS 1781 (Superior Court NJ App. Div. 2009); petition for certification denied, 983 A.2d 201, 200 N.J. 472 (NJ 2009); petition for *habeas corpus* dismissed, *Caines v Ricci, et al.*, Civil No. 10-3643 (WJM). (US DC D. NY 2012)

COMMENTARY: Sergeant Daniel Poland, supervisor of the Document Examination Unit of the New Jersey State Police, qualified as a handwriting expert.

2010

1123. *Hiemstra v Hiemstra*, No. A-4648-08T1 (Super. Ct. NJ App. Div. 2010)

COMMENTARY: William Ries testified as a handwriting expert after both parties stipulated to his qualifications.

1124. *State v Goodman*, 1 A. 3d 767, 415 N.J. Super. 210 (NJ App. Div. 2010)

While in prison waiting trial, defendant sent a letter to another inmate. The letter, that could have been interpreted as soliciting help in intimidating or harming a potential witness, was found after an incident in the jail. William Davis, a forensic document examiner from the New Jersey Division of Criminal Justice, identified defendant as writer of the letter.

COMMENTARY: Maybe convicted felons should be given special credit on their sentences to the degree they made conviction easier for the prosecutor. It is the only area in which being a bit stupid is a beneficial public service.

2011

1125. *Digiacoimo v Wal-Mart Stores, Inc.*, and Marshall, No. A-3873-09T3 (Super Ct. NJ App. Div. 2011)

Digiacoimo was indicted for check forgery since several bad checks had been found with his name as payee. After Digiacoimo was arrested and held in jail, the handwriting expert could neither identify nor eliminate him as maker of the forged checks, so the prosecutor dropped the charges, whereupon Digiacoimo sued “alleging negligent and intentional conduct constituting malicious prosecution, false arrest, false imprisonment, false detention, deprivation of constitutional rights and infliction of emotional distress.” The suit was dismissed by the court which was affirmed upon appeal.

COMMENTARY: This is one of those cases where the expert is said to have had no opinion, whereas the opinion was expert and ultimately helpful to all parties. It would be good if we could figure an efficient and fair way to compensate citizens for suffering such occurrences and clearly make their non-guilty status publically known.

1126. *State v D'Ottavio*, Docket No. A-0289-09T4 (Super Ct. NJ App. Div. 2011)

COMMENTARY: The testimony of a handwriting expert was received.

2012

1127. *Azizi v Phillips*, No. A-2975-05T1. (Superior Ct NJ App. Div. 2006.)

Plaintiff claimed Robert J. Phillips had not given document examination services as contracted for and she allegedly paid for. Phillips’ appeal from the trial court’s decision was denied for, among other things, failure to pursue discovery before trial, to exercise other rights before trial, and for appearing at trial unprepared.

COMMENTARY: Both parties acted in pro per. The trial transcript reveals that Phillips maintained that plaintiff was the opposing party in one case whom he confused with a client of the same name in an unrelated case. As a result, he appeared in small claims court with the wrong file. His repeated requests for a brief recess to run home for the correct file were denied.

1128. *EMC, LLC, successor in interest to Emigrant Mortgage Company, Inc., v Cooper, et al.*, No. A-0948-10T4. (Superior Court NJ App. Div. 2012)

Two defendants denied their signatures on mortgage documents. Their handwriting expert, J. Wright Leonard, testified to her observations supporting her opinion. Emigrant's expert, William J. Ries, explained the evidence of falsity as evidence of disguise, stating he had had more than 200 cases where people deliberately disguised their signatures in order to deny them later.

Emigrant prevailed.

COMMENTARY: There is no report that defendants objected to Mr. Ries' psychic ability to determine a writer's past intention to deny a signature several years in the future.

1129. *Harrison v Estate of Massaro*, No. A-3497-09T2. (Superior Ct. NJ App. Div. 2012)

"Following Massaro's death, Harrison searched their home for an executed will in her favor. Shortly after Thanksgiving 2007, she claims to have located in a jacket pocket a typed or word processed letter to Servin, purportedly signed by Massaro, in which Massaro modified his will to bequeath small sums to three individuals and a charity and to make Harrison the beneficiary of the remainder of an estate that was disclosed at trial to be worth approximately \$24,000,000 or more. Harrison disclosed the existence of the letter and the circumstances in which it had been found to her sister. Both testified at trial regarding the letter.

"The Estate challenged the authenticity of the letter and, at trial, offered the testimony of an expert in forensic document examination, John Osborn. The expert concluded that the signature on the letter was created by use of Massaro's signature stamp or by a manipulation of a stamped signature. Harrison offered no contrary expert proofs. Servin testified at trial that he did not receive a copy of the disputed letter."

COMMENTARY: Later, Osborn's name is misspelled with an "e" at the end. The trial judge also considered stylistic qualities of the letter, concluding it was not authored by a native speaker of English. Harrison was awarded a lump sum palimony about a tenth of what she sought with the letter on the basis that decedent, while declining to marry her, had promised he would take care of her for life if she lived with him.

1130. *State v Graham*, No. A-0025-11T1. (Superior Ct. NJ App. Div. 2012)

COMMENTARY: A handwriting expert testified at trial.

2015

1131. *Rabbitt v Weinberg, et al.*, No. A-3697-13T2 (Super. Ct. NJ App. 2015)

This arose out of an election to replace a retiring state senator. The appeal involves issues of grand jury evidence, evidence at a criminal trial, then at a civil trial in which Rabbitt sued for malicious prosecution and abuse of process. A handwriting expert testified Rabbitt had handprinted another's name on a letter of resignation. This established a prima

facie case for forgery, but in the end the judge found Rabbitt not guilty of forgery.

COMMENTARY: The case is more complicated than my summary, but for our purposes it can be noted the handwriting expert concluded it was "highly probable" that Rabbitt had printed the name. Based on other criminal cases, we can reasonably infer that the judge considered "highly probable" versus "definite" as less than the required "beyond a reasonable doubt."

1132. *State v Falco*, No. A-1745-08T4 (NJ Super. Ct. App. Div. 2010; denial of petition for post conviction review, No. A-2476-12T1 (NJ Super. Ct. App. Div. 2015)

COMMENTARY: A handwriting expert testified at trial that the victim had not signed forged checks. Falco had helped an elderly lady with her finances; additionally, he helped himself.

1133. *State v Kidd*, No. A-4234-12T3 (Super. Ct. NJ App. Div. 2015)

COMMENTARY: Testimony of a handwriting expert was received.

1134. *Two River Community Bank v Mazzucca and Connor-Mazzucca*, No. A-5573-12T3 (Super. Ct. App. NJ 2015)

Defendants were husband and wife fighting a foreclosure. They denied having signed any of the documents involved and offered a handwriting expert who testified that they had not. "The expert reached that conclusion based on a single exemplar allegedly from each defendant, which she did not see defendants sign." Due to a plethora of other evidence, such as their own attorney's testimony, neither the husband's nor the handwriting expert's testimony was found credible. The wife did not participate in the trial.

COMMENTARY: This is another case where the expert can be thankful she was not named. It is stated she violated her own standards in finding for her client.

2016

1135. *Angelucci v Aglialoro, et al.*, No. A-0369-14T2 (NJ App. Div. 2016)

Angelucci asserted that her deceased father's signature on a change of beneficiary was a forgery which had to be proved by clear and convincing evidence since forgery is a fraud. Aglialoro's handwriting expert was found more credible than Angelucci's.

COMMENTARY: The trial judge noted things that could explain claimed evidence of forgery: writing position, writing surface, Aglialoro was deceased's significant other so it was reasonable he dropped his daughter and granddaughter as his beneficiaries, and defendant's expert used a broader array of exemplars. If an attorney specializes in probate practice, it might be a good idea to collect all the non-evidential reasons for deciding for one party over the other, such as in this case where both trial and appeal judges agreed the change of beneficiary should have been expected since Aglialoro was deceased's significant other. Modern researchers have proudly announced they discovered for the first time what

Aristotle knew about 2500 years ago. Persuasion in science is fact-based, while in public debate, as in forensics and courts of law, persuasion tends to be shared-value-based.

3. New Jersey Supreme Court.

1995

1136. *New Jersey Steel Corporation, et al., v Warburton, et al.*, 139 N.J. 536, 655 A.2d 1382 (NJ 1995)

Midlantic National Bank, one of the defendants, appealed. An expert testified that the Midlantic did not follow its own policy or industry standards in checking for forged payor and endorsement signatures. However, New Jersey Steel had failed to check its bank statement in a timely manner, so it could not legally obtain same relief.

COMMENTARY: Although a handwriting expert did not testify, I include this case because it alerts one that there is more than one effective approach to prevailing in a handwriting dispute. In an early case of mine I demonstrated how the bank had failed to follow any of the instructions in its employee manual on how to verify a signature. Enquire whether an opposing financial institution has a written policy on such matters. Failure to do so might not be an escape from frying pan of a neglected signature comparison but a jump into the fire of negligence of an industry standard. Too often I have felt attorneys and litigants have assumed an enquiry would be fruitless rather than bother to find out whether there be fruit worth gleaning after due diligence in discovery.

1997

1137. *State v Marshall*, 690 A. 2d 1, 148 N.J. 89 (NJ 1997)

COMMENTARY: The testimony of handwriting expert Richard Tidey was received.

DD. NEW MEXICO CASES.

1. New Mexico Trial Courts.

I have not found any trial cases for New Mexico.

2. New Mexico Court of Appeals.

1997

1138. *Martinez, et al., v Martinez, et al.*, 123 N.M. 816, 945 Pac.2d 1034, 1997-NMCA-096 (NM App. 1997)

Plaintiffs called Judith Housley who said the questioned signature was forged and the

date altered, and she identified the writer. Three lay witnesses also said the signature was forged. Plaintiffs prevailed.

COMMENTARY: Ms. Housley is a member of NADE. She has informed me that she had been the subject of repeated, vigorous, though unsuccessful, attacks on her qualifications and competence.

2000

1139. *State v Torres*, 129 N.M. 51, 2000 NMCA 38, 1 P.3d 433, 2000 N.M. App. LEXIS 28, 39 N.M. St. B. Bull. 20

“The State presented evidence that the USPS return receipt had originally been attached to a letter sent to Joseph Vigil by a nursing home where Defendant worked. Mr. Vigil was in Clayton, New Mexico, at the time he allegedly signed the return receipt and was not an employee of INS. The State’s handwriting expert identified some of the handwriting on the return receipt as definitely belonging to Defendant, and some of the handwriting as probably belonging to Defendant. The State’s expert also testified that the cash receipt was written by Defendant and showed evidence of alteration, erasure, and the use of correction tape. The State’s expert did not issue a conclusive opinion about the validity [*4] of the money receipt.”

COMMENTARY: Torres could not explain how she had the false INS receipt. The case has several document examination tasks that one would wish more information on. Even so, it shows legal reliability and admissibility of the several tasks.

2012

1140. *State v Garcia*, Docket No. 31,470. (NM Ct. App. 2012)

Defendant, a male, was convicted of contributing to the delinquency of a minor, a female, who, however, did not become delinquent. The basis of accusation of contribution was a handwritten letter of a sexual fantasy addressed to a female. In a series of inferences based on single facts and a reasonable supposition the Court of Appeal finds that the jury could have reasonably convicted defendant.

COMMENTARY: This kind of logic is dangerous, since the cases in which it seems ideal will persuade us it is always an ideal logic. However, to avoid all reasonable doubt logically, the supposition must be proven valid in all cases of the same kind to which it is applied, and one must not slip into actually inferring the factual conclusion directly and solely from the single fact. This kind of inference is part of what is called indirect evidence. The instructions that I have heard regarding indirect evidence when on a jury panel seemed to be logically inadequate even if legally correct. This applies to other instructions, for example “proof beyond a reasonable doubt” being defined as “an abiding conviction” without consideration of the cause for the abiding conviction. Valid logic should be a legal requirement in criminal convictions, while some case reports hint that at times such is not a

universal requirement.

3. *New Mexico Supreme Court.*

I have not found any cases for New Mexico Supreme Court.

EE. NEW YORK CASES.

From the web site for New York Judiciary: “The Court of Appeals, New York’s highest-level court, hears civil and criminal appeals from the state’s intermediate appellate courts, and, in some instances, directly from the trial courts. The Court also hears appeals from determinations by the State Commission on Judicial Conduct, which is responsible for reviewing allegations of misconduct brought against judges.”

The organization seems a bit more complex than other states have, and the names of various courts seem different. Therefore, fair warning: The arrangement of case citations is probably a bit to very incorrect.

1. *New York trial courts.*

1998

1141. *People v Deblinger*, 179 Misc.2d 35, 683 N.Y.S.2d 814 (NY Supreme Court, Kings County 1998)

After being convicted on several charges from one of three charged sexual assaults on his young daughter, Defendant moved to set aside the conviction. People’s document examiner concluded the report card submitted as evidence how the victim was traumatized was forged, and the teacher testified it was not in her handwriting and not the report card she had issued. A new trial was granted.

COMMENTARY: The retrial would be only for the one occasion for which he was found guilty.

2000

1142. *People v Perry*, Indict.No. NI0931/98. Memorandum. (Supreme Court Queens County, Criminal Term Part K, October 6, 2000)

“Defendant retained a handwriting expert, Ms. Jean Peetz, to examine the written statement, to compare it to a sample of defendant’s handwriting and to render an opinion as to whether the defendant wrote the body of the confession.”

People’s motion to exclude Peetz granted since she relied on *post litem motam* exemplars. That they were written in open court was not relevant, since the People noted they were not with request of the opposing party.

COMMENTARY: I doubt that Peetz would have been the one to take the exemplars. This underlines an often repeated comment that expert witnesses should as best they can learn the laws and rules that govern their work, for their own protection if not for better service to the client. Just be careful not to appear to give legal advice while diplomatically calling attention to a consideration.

2003

1143. *Harris v Harris*, Supreme Ct. of N.Y., County of Queens, Findings of Fact (2003)

At hearing, defendant called handwriting expert Jeffrey Luber. He testified that plaintiff most probably printed and wrote her mother's name on marriage license. Since she failed to prove defendant had married her, summary judgment was granted. The two had cohabited for several years. Court gives this quote: "The mutual agreement necessary to create such a marriage must be conveyed with such a demonstration of intent and with such clarity on the part of the parties that marriage does not creep up on either of them and catch them unawares. One cannot be married unwittingly or accidentally."

COMMENTARY: A legal triumph for the confirmed bachelor who wants it both ways.

2005

1144. *People v Pierre*, 2005 NY Slip Op 50522U, 7 Misc. 3d 1010A, 801 N.Y.S.2d 240, 2005 N.Y. Misc. LEXIS 703 (Supreme Ct. King's County NY 2005)

[*4]: "[Defendant alleges that] his trial attorney, John B. Stella, did not effectively cross-examine some witnesses, particularly Matthew Falco, a handwriting expert who identified the defendant's handwriting ('highly probable') on a note found in the getaway car. (*Ground I, pars. 1-4*). This note referred to the money that would be coming out of the Beer Castle. The note, according to Falco, also contained the handwriting (again, 'highly probable') of co-defendant Terry Williford asking when the money would be coming out. In his own testimony claiming duress, the defendant admitted to having written the note in answer to the written inquiry of co-defendant Williford. Therefore, vigorous cross-examination of the handwriting expert by his attorney would not have benefitted the defendant."

[*5]: "[Defendant alleges that] defense counsel was ineffective for allowing the defendant to testify that his co-defendants coerced the defendant into assisting in the crime (*Ground I, pars. 7-22*). The decision to testify belonged to the defendant himself, and the defendant, given the circumstances of the case, had to explain in his defense how a note in his own handwriting concerning the money came to be in the getaway car. A duress defense was not so implausible as to amount to ineffective assistance, given all of the surrounding circumstances of the case, and the facts in the defendant's statements to the police (even though those statements were not introduced at trial). Although this defense was not

credible, there really was no other defense available. Had the defendant pursued a different defense, the People may very well have decided to ask for a severance and introduce the defendant's statements admitting his participation under duress. Thus, the defendant was effectively 'locked in' to this defense."

The decision concludes: "The defendant testified at trial and had every opportunity to present his version of the facts supporting his defense of duress. His true problem is that almost no version of the events can establish this defense, because the compelling evidence of his note in the getaway car and his connections to the Beer Castle and Michael Williams are just too much for even an inventive mind to overcome.

"For the foregoing [*13] reasons, the defendant's motion is in all respects denied without a hearing."

COMMENTARY: I give extended quotes on what is a simple issue so that you may enjoy the logic of the appeal, namely, that trial counsel was ineffective for offering the least unlikely defense in an impossible situation.

1145. *In the Matter of the Estate of Casimiro Romano*, 2005 NY Slip Op 51011U, 8 Misc. 3d 1010A, 801 N.Y.S.2d 781, 2005 N.Y. Misc. LEXIS 1319 (Surrogate Ct. NY Nassau Co. 2005)

"In support of her claim that the conveyance was a gift, Mrs. Romano offered the testimony of Benedict Lonetto (hereinafter 'Lonetto'), the decedent's accountant for over thirty-six years, who purportedly acted as a witness on the deed. Prior to trial, the objectant claimed that the signatures of both the decedent and Lonetto on the deed were forgeries. [*13] At the commencement of the trial, however, the objectant, based upon a change of opinion of his handwriting expert, conceded that the decedent's signature was genuine. The objectant maintained that Lonetto's signature was a forgery and offered at trial the testimony of Jeffrey Lubber, a handwriting expert, in support of his position."

Then later: "[A] certificate of acknowledgment attached to a deed raises a presumption of due execution which can only be overcome with clear and convincing evidence (*Albany County Savings Bank v McCarty*, 149 N.Y. 71, 80, 43 N.E. 427 [1896]; *Republic Pension Services, Inc. v Cononico*, 278 A.D.2d 470, 718 N.Y.S.2d 76 [2000]). Here, the allegation of forgery is made as to the witness's signature on the deed which, in this case, was superfluous [*32] since the deed was acknowledged. In any event, in the case of alleged forgery, '[a] high degree of proof is required to set aside a deed on the ground of forgery' (5 *Warren's Weed New York Real Property* §§ 50.81 [5th ed. rev.]). Although the handwriting expert testified he is ninety-eight to nine percent certain it is not Lonetto's signature on the deed, Lonetto vehemently testified that it is his signature. Mrs. Romano's counsel argues that the expert's opinion is questionable because he ultimately conceded prior to trial that he was incorrect in his position that the decedent's signature on the deed was a forgery. Furthermore, most of the exemplars used by the expert were photographic reproductions, not originals. The expert also testified that he did not review some of the exemplars until immediately before he testified. Here, the testimony as to Lonetto's

signature is conflicting and as such is insufficient to overcome the presumption of due execution of the deed raised by the acknowledgment.”

COMMENTARY: The lengthy quotes are offered as a salutary lesson to us all. The expert made several mistakes, one being offering a numerical statement of certitude which the best authorities instruct us not to do. See, for example: Thomas V. McAlexander, Jan Beck and Ronald M. Dick, *36 Journal of Forensic Science*, “Standardization of handwriting opinion terminology,” 311-9 (March 1991).

2007

1146. *Bryant v Bryant*, 2007 NY Slip Op 52413 (NY Surrogate’s Ct. Bronx 2007)

Caroline Kurz, a forensic document examiner since 1985, testified as an expert witness. She opined that although the same person signed all of the exemplars in evidence, a different person signed the New York deed. On cross-examination, the expert agreed that there are numerous variations in the decedent’s signature on several of the exemplars in evidence, but she maintained that such variations are usual or common, and do not constitute indicia of a forgery. Her opinion was based on size and proportions of certain letters and “the flow or rhythm of the signature.”

“The expert conceded during cross-examination that she could not provide a precise definition for either flow or rhythm and that, in many ways, authenticating a signature is more of an art than a science.”

COMMENTARY: “Flow” is one of those basic English words one should be able easily to understand and explain, otherwise one should master the language and the exigencies of testifying as an expert before venturing into court. All we need do is refer to *Merriam-Webster Collegiate Dictionary* for the fundamental meaning of “rhythm” and then apply it to handwriting: Rhythm in handwriting is the recurrence and/or alternation of the same or similar features according to a pattern across time and space. Each element of that definition is subject to objective and demonstrable observation.

2009

1147. *In the Matter of Petote*, 2009 NY Slip Op 50015 (NY Surrogate’s Court, New York, Monroe 2009); affirmed with modification, 81 A.D.3d 1370, 916 N.Y.S.2d 696 (App. Div. Supreme Ct. NY 4 Dept. 2011)

2009 Slip Op 50015:

“Petitioner’s sole direct evidence of fraud came from James Beikirch, a handwriting expert who served in the Monroe County Sheriff’s office for thirty five years. Mr. Beikirch testified that the signature on the document was not authored by the same person who authored known examples of the decedent’s signature. Mr. Beikirch has a history of professional expertise in the area of forgery detection and signature analysis. On its face value, his testimony was both professional and credible. However,....”

Then follows a list of faults not of Beikirch's doing. Plaintiff sabotaged his testimony as she did her own attorney's efforts on her behalf. The Court's assessment was:

"Clearly, petitioner's doubts were strongly colored by the parties' contentious relationship, but petitioner had a right to investigate her concerns as a potential administrator, collect evidence, and through her counsel, have her day in court.

"By the date of the hearing, however, once all evidence was collected, petitioner was pursuing this matter not out of a question of justice but out of her emotions regarding the respondent, sanctionable conduct under NYCRR §§130-1.1(c)(2). She acted unprofessionally and without good faith during the hearing. Exemplars were misplaced during the trial, and had been mis-identified prior to Mr. Beikirch's analysis, rendering his conclusions meritless, conclusions upon which petitioner's position critically relied. She interrupted the trial to insert her opinions with regard to how the matter should proceed, stubbornly resisted to concede obvious points, and was determined to litigate the entire question based upon principle alone once it was clear that her legal position was untenable. Petitioner's attorney performed admirably and professionally, especially given the extremely high burden of proof which he faced, but his representation of petitioner was hampered by petitioner herself, to the point where it affected the judicial process and caused unfair financial repercussions to the respondent."

COMMENTARY: The order in which I retrieved the various cases discussed in this collection cannot be recovered. This case was included in August 2012, by which date my empathy for the experts had grown, except for one or two pointed exceptions, and an astute reader could probably discern the identity of the more exceptional of the exceptions. More and more I am suspecting expert witnesses suffer far more damage from their clients, both litigant and attorney, than these suffer from their experts. This is a case in point, wherein the judge said at first of Beikirch: "On its face value, his testimony was both professional and credible." Then came the difficulties arising on cross-examination, and finally the attributing of the source of these difficulties to plaintiff. Absent the last bit of information, it would have appeared it was a case lost by the expert witness, which would have been a most unjust assessment. How many other expert witnesses have suffered such clients, but the case report gives appearance of the opposite sufferance?

Beikirch and I are members of NADE, so the reader might want to read the case report itself lest I let organizational loyalty influence objective assessment. All quotes given are from the trial level, however, the appeal decision mentions neither Beikirch's name nor Petitioner's untoward behavior, giving the impression the expert witness was a dud rather than suffering the wiles of an undesirable client.

1148. *Yellow Book of NY, Inc., v Albano, et al.*, 2009 NY Slip Op 32319 (NY Supreme Court Nassau County 2009)

COMMENTARY: Document examiner Dennis Ryan testified to the authenticity of defendant's signature on three disputed advertising contracts.

2010

1149. *Bernstein v Braiman*, 2010 NY Slip Op 51047 (NY Supreme Court Kings County 2010)

“At the close of the evidence, this court held the Guaranty, purported to have been executed by plaintiff, to be a forgery, rejecting the completely incredible and unreliable testimony of Stephanie Mitchell, who purportedly notarized plaintiff's signature on a Power of Attorney authorizing Braiman to act on his behalf in real estate transactions and on the personal Guaranty of Mermaid's obligation under the loan from defendants. In reliance on the uncontroverted proof that plaintiff was on a plane on his way to, or in, Aruba on the date the documents were supposedly notarized, and the testimony of handwriting expert Jeffrey Luber that the signatures were not those of plaintiff, this court held that plaintiff Bernstein did not execute either the Power of Attorney or the Guaranty and is not personally liable to the mortgagees.”

COMMENTARY: I keep hoping for a case of forgery where it can be proved the alleged signatory was on the other side of the world at the critical moment.

1150. *Recco Home Care Servs., Inc. v Recco*, 2010 NY Slip Op 30516 (NY Supreme Court, Nassau County 2010)

COMMENTARY: The opinion of a handwriting expert was received.

1151. *Webb, et al., v Smith, et al.*, 2010 NY Slip Op 51814 (NY Supreme Court New York County 2010)

COMMENTARY: The parties stipulated to the qualifications of Dennis Ryan, a forensic document examiner, and Ruth Brayer, handwriting expert.

2011

1152. *In the Matter of the Estate of Helen Werner, Deceased*, 2011 NY Slip Op 52522 (NY Surrogate's Ct. Erie Co. 2011)

Robert Baier, a forensic document examiner, issued a report that it was “highly probable” that Decedent's signature on her will was forged. On the contrary, two attorneys testified she signed the will in their presence. Objectants did not explain why two attorneys would perjure themselves, an “inescapable” conclusion “if Baier's qualified opinion had any merit.”

The Court quotes a 1984 decision: “*In Matter of Slade*, 106 AD2d 914, 915 [1984], our Appellate Division, in an analogous case, held that ‘where opinion testimony is contradicted by the facts, *the facts must prevail*’ (emphasis added).” Since the attorneys' testimony was uncontradicted, the expert report did not raise a triable issue.

COMMENTARY: There were other issues addressed in the ten-page report which granted summary judgment to the estate.

1153. *25 West 86th St. Operating Corp. v Blanchard, et al.*, 2012 NY Slip Op 51798(U) (Supreme Court, Appellate Term, First Department 2012)

This is the entire text of the report:

“A fair interpretation of the evidence supports the trial court’s express finding that tenant had a ‘deemed two-year lease renewal’ through March 31, 2009 and that the signature on the disputed one-year renewal lease proffered by landlord was not that of tenant (see generally *Thoreson v Penthouse Intl.*, 80 NY2d 490, 495 [1992]). This finding, resting in large measure on the trial court’s assessment of the credibility of tenant’s forensic handwriting expert and the weight to be accorded to his testimony, is entitled to deference on appeal (see *Levy v Braley*, 176 AD2d 1030, 1033 [1991]). Thus, this 2008 holdover proceeding was properly dismissed, since the notice of nonrenewal was not served during the ‘window period’ prior to expiration of the two-year renewal lease found by the court to be effective (see *Ansonia Assoc. v Consiglio*, 163 AD2d 98 [1990]). In light of the court’s finding that tenant did not execute the one-year renewal lease relied on by landlord, and in the absence of any showing that it was signed by a person who had actual or apparent authority to act on tenant’s behalf, landlord’s claim that the one-year renewal was ratified by tenant was properly rejected (see *Leasing Serv. Corp. v Vita Italian Rest. Inc.*, 171 AD2d 926 [1991]; 12 *Williston on Contracts* [4th ed] § 35:29). Nor did the court err in denying landlord’s mid-trial request for the name of tenant’s forensic expert (see CPLR 408; *Collins v Greater New York Sav. Bank*, 194 AD2d 514 [1993]).

“In view of this determination, we need not and do not address landlord’s remaining arguments.

“THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.”

COMMENTARY: Some things are made unclear, such as did the handwriting expert testify in person or only by written report not disclosed to the landlord? Or was there another forensic expert involved? Having worked for both landlords and tenants, I can assure the reader that members of both classes of citizens are equally capable of fabricating needed documentation.

1154. *Jiles v Archer, et al.*, 2012 NY Slip Op 50260 (NY Supreme Court Queens County 2012)

In a rather long case report, this is all there is on handwriting expertise: “Plaintiff also called ‘forensic document examiner’ Donald Lehew. He testified that based upon his examination of plaintiff’s signature on the 2006 deed and other exemplars prepared by the plaintiff, that the 2006 signature did not match the examples of her known signature.”

COMMENTARY: Plaintiff’s application was denied and her complaint dismissed. In summary the court said: “Thus, because this court finds that plaintiff had unclean hands in connection with the purchase and sale of this house she is barred from legal and equitable relief [citations omitted].”

1155. *Smith v Sullivan*, 2012 NY Slip Op 22368 (NY Supreme Court, Orange County, 2012)

Smith and Sullivan ran for the same office of County Legislator, and in a very close race each sought to nullify votes cast for the other, while Smith sought to have some voters for him cast ballots after the close of the election. Smith presented an affidavit and testimony from Robert Baier, handwriting expert, challenging the validity of signatures by voters for Sullivan. The court discounted the testimony for what seem to be speculative and logical reasons.

COMMENTARY: This case is interesting for several reasons which include the judge's decisions on what he was forbidden to do, for recourse the litigants might have, for the strategy of the parties, and why the judge discounted the handwriting testimony by Baier. Each party apparently took actions that were against its own position in court by invalidating some of its own votes. The reasoning by the judge for discounting the expert testimony seems to me based on the fact that the witness was entirely candid about the limitations he labored under and what could require him to alter the assurance of his opinion.

To my mind candidness of that kind would lead me to give more credit to someone's testimony. Indeed, the witness showed the same modesty in his limitations under the accepted standards of his discipline as the judge showed under the rules he was obliged to follow. Thus, I tend to think the judge gave reason why his decision should be as questionable as he found the expert's testimony. However, since my view might be incorrect, read the case report for yourself if this issue is of interest to you, but read it also because it is one of those cases that teach us how the judicial mind can operate. On the other hand, the issues the judge raised regarding Baier's testimony are astute so that one could justly disagree with my assessment and find the case to be a handy guide to cross-examining a handwriting expert.

2013

1156. *Sanders v Lawsky*, 2013 NY Slip Op 32219(U) (Sup. Ct. NY County 2013)

The entire citation is: "2013 NY Slip Op 32219(U); *In the Matter of the Application of MARCIE L. URY SANDERS, Petitioner*, For a judgment under Article 78 of the CPLR Annulling the Final Determination and Order of the *State of New York, Department of Financial Services, v. Benjamin M. Lawsky, Superintendent of Financial Services, and the NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES, Respondent*. Docket No. 100670/13, Motion Seq. No. 001. Supreme Court, New York County. September 17, 2013. Filed September 20, 2013." This gives one an idea how slimmed down case citations generally are.

Sanders absented herself from the hearing: "Petitioner also argues that respondent improperly shifted the burden of proof, violated the State Administrative Procedures Act, and violated her due process and Fifth Amendment and spousal privileges not to testify because of a pending criminal investigation against her husband.[3] Petitioner also states

that the penalty shocks the conscience and absent a stay, she ‘will not be able to maintain my insurance business which is my source of income for myself and my children.’”

Footnote 2 reads: “Petitioner did not appear or testify at the hearing but her counsel presented the testimony of a handwriting expert and maintained that an unknown person falsified petitioner's signatures and the notary on the certificate of insurance issued to D & J.” Footnote 3 states that the law permits an adverse inference to be drawn from taking the Fifth Amendment, so Sanders had no cause for complaint on that issue.

COMMENTARY: Sanders’ husband was charged with insurance fraud so that he no longer had an insurance license, but she let him operate under her insurance license, also an impermissible thing. There is no indication precisely what the handwriting expert testified to.

2014

1157. *Arnav Industries, Inc., v M.H.B. Holdings, Inc., et al.*, 2014 NY Slip Op 32005(U) (Supreme Ct. NY County 2014)

Arnav’s motion to vacate a satisfaction of judgment recorded previously was denied. The legal discussion would be of interest to an attorney, but for our purposes it is sufficient to note that the claim of fraud and forgery for purposes of the motion would have to be established prima facie by clear and convincing evidence within permissible limits of what may be submitted in support of such motions. This was not done.

“Although Katlowitz's signature samples and his denial of his signature on the satisfaction fall short of prima facie clear and convincing evidence of a forgery, any comparison of his undisputed signatures with his disputed signature to establish that the latter is a forgery, in any event, only may be made at trial by a handwriting expert or by the trier of fact. C.P.L.R. §§ 4536, 4538; *Felt v. Olson*, 51 N.Y.2d 977, 979 (1980); *People v. Hunter*, 34 N.Y.2d 432, 435-36 (1974); *People v. Fields*, 287 A.D.2d at 578; *Smith v. Coughlin*, 198 A.D.2d at 726. See *Olympus Servicing, L.P. v. Lee*, 56 A.D.3d 537, 538 (2d Dep’t 2008).”

COMMENTARY: I include this case for the thesis that, only if the lawmaker is persuaded that testimony at trial by a handwriting expert can be reliable, would it be stated in the law to be a means for establishing an essential fact

2015

1158. *Volmar, et al., v Montano, et al.; Lalota, et al., v Mata, et al.*, 2015 NY Slip Op 51202 (NY Suffolk Co., Supreme Court 2015)

In an election dispute, Richard Picciochi testified as document examiner for Petitioners and found a number of irregularities in signatures submitted by Respondents-Candidates. However, Petitioners needed to prove fraud which required evidence Respondents knew of the falsity of some signatures or had fraudulent intention in filing the

petitions with false signatures.

COMMENTARY: It seems once more that the document examiner did a satisfactory job for the client but the attorney did not. The proof of fraudulent intent is beyond the expert's professional area, however much the expert might be personally persuaded it is present.

2016

1159. *Kupperstock v Kupperstock*, 2016 NY Slip Op 51160 (NY Supr Ct. Queens County 2016)

COMMENTARY: A divorced woman came from a well-to-do family and the evidence and the court's finding was she did not sign for a mortgage on the house that was her sole property. Her document examiner was John Paul Osborn and her ex-husband's was Dennis J. Ryan.

2. New York Courts of Appeal.

1994

1160. *People v Michallon*, 201 A.D.2 915, 607 NYS2 781, 1994 NY App Div LEXIS 2088 (NY Supreme Ct 1994)

At page 783 the Court of Appeals says that "the court erred in admitting opinion testimony by the People's handwriting expert that spray paint writing on the victims' vehicles corresponded to defendant's handwriting. The People failed to make the threshold showing that comparing handwriting to spray paint writing is scientifically reliable." The error was harmless since it was not shown the jury would have found differently if that testimony had not been given and since notes found on victims' vehicles were identified by the expert as written by defendant.

COMMENTARY: The usual handwriting comparison was admissible and apparently not objected to as unreliable. I do not think that any qualified handwriting examiner would disagree that to perform an unusual comparison, such as with spray-paint graffiti, would require special competence in that endeavor and ability to prove one's competence.

1995

1161. *Dalton v Educational Testing Service [ETS]*, 155 Misc.2d 214 (1992); affirmed, 87 N.Y.2d 384, 663 N.E.2d 289, 639 N.Y.S.2d 977 (NY Ct. App. 1995)

Dalton's son appealed withholding his SAT score. ETS had a handwriting expert conclude two different persons wrote on his test answer sheet. The Daltons had a handwriting expert say otherwise, then ETS had a third agree with the first. The court found ETS had not investigated reasonably so it was ordered to release the SAT score.

COMMENTARY: One hopes the two parties did not go on forever retaining new handwriting experts to agree with their own previous ones.

1998

1162. *People v Stover*, 254 AD 2d 377, 678 N.Y.S.2d 734 (NY App. Div., 2nd Dept. 1998)

At page 378: “Similarly unpersuasive is the defendant's contention that reversible error took place as the result of the prosecutor's extensive voir dire regarding the qualifications of the defendant's handwriting expert. The prosecutor's questions were directly relevant to whether the defense expert was ‘possessed of the requisite skill, training, education, knowledge or experience’ from which it could be assumed that his testimony was reliable, and thus the questions were not improper (*Matott v Ward*, 48 N.Y.2d 455, 459).”

1163. *Rammos, et al., v STA Parking Corp.*, 248 AD 2d 296, 670 N.Y.S.2d 86 (NY App. Div., 1st Dept. 1998)

At page 297: “Specifically, we find no error in the court's rejection of the testimony of defendant's handwriting expert, especially since the expert, although claiming that the disputed notations upon the promissory notes in issue did not comport fully with samples supposedly provided by defendant, could not verify that the samples used by him in his comparison were in fact those of defendant.”

COMMENTARY: Rarely, it seems, do opposing attorneys delve into such fine points as essential foundations for expert opinions. That may be why document examiners by and large neglect such essentials in their alleged scientific standards, for it seems standard not to make a systematic and complete list of required criteria for opinions on various issues, such as scientific, technical and legal criteria for exemplar writings.

The expert should not authenticate the exemplars for that would be to base one's final opinion on one's own earlier opinion. The party calling the expert must be made to authenticate the exemplars which can be done by any of the several ways the law permits documents to be authenticated other than by the handwriting expert's own opinion.

1999

1164. *In the Matter of Garcia v Selsky*, 266 A.D.2d 772 (1999), 699 N.Y.S.2d 500 (App. Div. Supreme Ct. NY, 3 Dept. 1999)

Garcia was a prison inmate found to have written threatening graffiti, among other violations of prison rules. Contrary to Garcia's contention, a handwriting expert was not needed to prove he had written the graffiti since the hearing officer could conduct his own comparative examination. However, he did not, repeatedly refusing Garcia's request to do so. The prison officer, who gave testimony identifying Garcia as the writer, was not qualified as a handwriting expert and was not personally familiar with Garcia's handwriting. The prison officials were ordered to expunge all reference to the incident from Garcia's

record.

COMMENTARY: The burden of cases regarding graffiti is that the witness, who is otherwise qualified as a handwriting expert, must also demonstrate the reliability of comparing handwritten exemplars on paper to the graffiti on whatever surface the writer used.

2000

1165. *Heraud v Weissman*, 276 A.D.2d 376, 714 N.Y.S.2d 476 (App. Div. Supr. Ct. NY 1 Dept. 2000)

The jury found for defendant doctor in a medical malpractice suit.

“Plaintiff’s post-trial motion to set aside the verdict and for a mistrial was properly denied. The court properly rejected plaintiff’s argument that its preclusion of plaintiff’s handwriting expert from testifying regarding alterations to Dr. Weissman’s medical records deprived plaintiff of a fair trial. It was within the trial court’s sound discretion to exclude ‘expert’ testimony that was of questionable probative value and likely to involve distracting collateral issues.”

COMMENTARY: A further argument for a mistrial was that a copy of Defendant’s contentions was inadvertently put with exhibits sent into the jury room. The judge asked jurors about having been influenced by the document, but only one had read it and then only after the jury had arrived at its decision. Maybe Plaintiff should have then switched gears and argued that by its own admission the jury had neglected its duty in not considering all the exhibits submitted to it. It does seem to be an unwritten rule in law that, when losing, one should argue both ends against the middle.

2001

1166. *People v Fields*, 287 A.D.2d 577; 731 N.Y.S.2d 492; 2001 N.Y. App. Div. LEXIS 9597 (Supr. Ct. NY, App. Div., 2 Dept. 2001)

“The defendant also contends that the court erred in admitting letters allegedly written by him and addressed to Marshall at the Orange County Jail as evidence of his guilt. *CPLR 4536* authorizes the ‘comparison of a disputed writing with any writing proved to the satisfaction of the court to be the handwriting of the person claimed to have made the disputed writing. [*4]’ Once a court determines the genuineness of a handwriting specimen, an expert or a jury may compare a disputed writing to the known specimen, even in the absence of an expert opinion (see, *People v Molineux*, 168 NY 264, 330; *People v Hunter*, 34 NY2d 432, 435-436). The prosecution’s handwriting expert testified on direct examination that the defendant probably wrote the letters, since the letters exhibited similar characteristics which evidenced a probable common authorship based upon his comparison with handwriting samples submitted by the defendant.”

COMMENTARY: The case report does not indicate what kind of letters were involved.

1167. *People v Pena*, 279 A.D.2d 300; 718 N.Y.S.2d 838; 2001 N.Y. App. Div. LEXIS 85 (NY Supreme Ct App 1 Div, 2001)

COMMENTARY: The jury's evaluation of the handwriting expert's testimony was affirmed.

2002

1168. *Cusack v 60 Minutes Division of CBS, Inc., et al.*, 2001 NY Slip Op 30092; affirmed, 299 A.D.2d 180, 749 N.Y.Supp.2d 242, 2002 N.Y. App. Div. LEXIS, 31 Media L. Re P. 1566, 2002 N.Y. Slip O P. 080878 (Supreme Ct N.Y. App. 1st Dpt 2002)

COMMENTARY: A two-foot stack of affidavits submitted by Cusack upon appeal, versus no reply papers addressing substantive issues, is ruled as not raising a triable issue and not overcoming the false finding of forgery in the federal criminal trial.

Three document experts for appellant are said to be graphologists when no document submitted had such a designation; therefore, the court had to have relied on undisclosed and surreptitious submissions for that and other statements. The three document experts addressed three aspects of the writings at issue, but the court cleverly states none said what the other two said while ignoring what they did demonstrate collectively without contradiction from any filings by defendants.

Cusack's attorney told me that the rule in New York is that, if appellees file no opposing brief regarding facts asserted by appellant, appellant's asserted facts are to be accepted as conceded. But it seems to me many rules had to go out the courthouse windows to convict Cusack in Federal criminal court and crush him in New York civil court.

2004

1169. *American Linen Supply Company v M.W.S. Enterprises, Inc.*, 6 A.D.3d 1079, 776 N.Y.S.2d 387, 2004 N.Y. App. Div. LEXIS 6133; subsequent appeal, 6 A.D.3d 1082, 775 N.Y.S.2d 617, 2004 N.Y. App. Div. LEXIS 6134 (N.Y. App. Div. 4th Dep't, 2004); appeal dismissed, 3 N.Y.3d 702, 818 N.E.2d 670, 2004 N.Y. LEXIS 2294, 785 N.Y.S.2d 28 (2004)

At [*6]: "We therefore modify the order and judgment by denying the motion in part, vacating the second through fifth ordering and decretal paragraphs, and setting aside the verdict in its entirety, and we grant a new trial. Because there must be a new trial, we add that the court did not abuse its discretion in precluding the opinion testimony of defendant's purported handwriting expert (see generally *Saggese v Madison Mut. Ins. Co.*, 294 A.D.2d 900, 900-901, 741 N.Y.S.2d 803 [2002]), but erred in refusing to admit in evidence, as irrelevant, handwriting exemplars of defendant's president for the purpose of comparison to his purported signature on the 1994 contract (see CPLR 4536; see generally *Matter of*

Garcia v Selsky, 266 A.D.2d 772, 773, 699 N.Y.S.2d 500 [1999]; 58A NY Jur 2d, *Evidence & Witnesses*, §§ 706).”

COMMENTARY: No information is given either why the “purported” expert was precluded from testifying or who it might have been.

1170. *People v Kairis*, 4 A.D.3d 806, 771 N.Y.S.2d 774, 2004 N.Y. App. Div. LEXIS 1472 (Supr. Ct. NY, App. Division, Fourth Department 2004); appeal denied, 2 N.Y.3d 763, 811 N.E.2d 43, 2004 N.Y. LEXIS 1454, 778 N.Y.S.2d 781 (N.Y., Apr. 23, 2004)

COMMENTARY: The contention regarding admissibility of the testimony of the People’s handwriting expert was not preserved for appeal.

2006

1171. *Matter of Estate of Dane*, 32 AD 3d 1233, 821 N.Y.S.2d 699 (NY App. Div. 4 Dept. 2006)

COMMENTARY: Opinion of a handwriting expert was received.

1172. *In the Matter of Fauci and Fauci*, 2006 NY Slip Op 1748, 28 A.D.3d 192, 811 N.Y.S.2d 38, 2006 N.Y. App. Div. LEXIS 2743 (Supr. Ct. NY App. 1 Dept. 2006); related proceeding, 189 NJ 201, 914 A2d 834, 2007 N.J. LEXIS 28 (2007); motion granted, 41 A.D.3d 1, 834 NYS2d 523, 2007 N.Y. App. Div. LEXIS 4638, 2007 NY Slip Op 3210 (N.Y. App. Div. 1st Dep’t, Apr. 17, 2007)

At [*6]: “With respect to Anthony’s application for admission to the bar, the Committee retained a handwriting expert who testified that after examining 12 known signatures of Christopher, and comparing them to the signature on the notarial jurat on Anthony’s bar application, and after examining the known signature of Anthony, it was Anthony who had affixed Christopher’s signature to his affidavit for admission to the bar.” This fact supported several findings of violations.

“[*8] However, the Committee’s handwriting expert testified that it was indeed Anthony’s signature on the stipulation. The Committee also presented two witnesses who testified that Anthony had attended that conference. Thus, the record fully supports the finding that Anthony held himself out as an attorney.”

COMMENTARY: Two brothers were found guilty of professional misconduct and suspended from the practice of law, one for three years and the other for 18 months. The false testimony given by the brothers in denying the forgeries was alone sufficient to justify the suspensions.

1173. *In the Matter of the Estate of Victoria Kunicki*, 35 A.D.3d 742, 827 N.Y.S.2d 244 (NY App. Div. 2 Dept. 2006)

COMMENTARY: About \$50,000 too much was rewarded for handwriting expert testimony fees, so it was give-back time.

2007

1174. *Lelekakis v Kamamis*, 41 AD 3d 662, 839 N.Y.S.2d 773 {NY App. Div., 2nd Dept. 2007)

COMMENTARY: The testimony of a handwriting expert was received but apparently not credited.

2008

1175. *People v Kimes*, 37 A.D.3d 1, 831 N.Y.S.2d 1 (App. Div. Supreme CT 1 Dept. 2006)

Defense wanted to cross-examine John Paul Osborn on mistakes his father and grandfather had allegedly made as testifying document examiners. It was not error for the trial judge to forbid it. At page 29: “[T]he Confrontation Clause guarantees an opportunity for cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” (*Delaware v Van Arsdall*, 475 US 673, 679 [1986], quoting *Delaware v Fensterer*, 474 US 15, 20 [1985].) Further, trial judges are given wide latitude to impose reasonable limits on cross-examination. (Id.)”

COMMENTARY: One is challenged how to characterize the demand to cross-examine Osborn on his deceased forebears. If it was meant seriously, then one can only wonder at what both trial and appellate counsel might not be serious about. If it was in jest, then one can at least say it was as cute as it was ineffective. In any case, such silliness can hardly dispose appellate judges to be partial to arguments by appellate counsel. At trial, if I were a juror and an attorney pursued such a line of questioning, I would be persuaded that the attorney knew his client lacked any relevant and persuasive evidence.

2009

1176. *In the Matter of Grancaric*, 68 AD 3d 1279, 890 N.Y.S.2d 685 (NY App. Div. 3rd Dept. 2009)

COMMENTARY: Testimony received from handwriting experts for both parties. The jury was free to believe one and not the other.

2010

1177. *Augustin v Augustin*, 79 AD 3d 651, 913 N.Y.S.2d 207 (NY App. Div. Supreme Ct. 1 Dept. 2010)

In action to overturn divorce decision wife was denied \$1,000 fee for handwriting expert’s appearance at trial. Her petition was denied since she had waited 18 years to allege fraud, and thus the expert’s appearance was unnecessary.

COMMENTARY: In another case a wait of four years was too long.

1178. *In the Matter of the Estate of Seymour Halpern*, 76 A.D.3d 429, 906 N.Y.S.2d 253 (App. Div. Supr. Ct. NY 1 Dept. 2010)

COMMENTARY: There are only several mentions that one or two handwriting experts authenticated the signatures of decedent and decedent's attorney on the will in question.

1179. *Leffler v Feld*, 79 AD 3d 491, 912 N.Y.S.2d 211 (NY App. Div., Supreme Ct. 1st Dept. 2010)

At page 491: "Finally, the testimony of plaintiff's handwriting expert was properly precluded because it 'was of questionable probative value and likely to involve distracting collateral issues'"

COMMENTARY: Nothing more was said on the issue.

2012

1180. *Bank of New York v Spadafora, et al.*, 92 A.D.3d 629, 938 N.Y.S.2d 200, 2012 NY Slip Op 922 (NY Supreme Ct. App Div. 2012)

Plaintiff's handwriting expert was properly limited in rebuttal testimony. However, plaintiff prevailed, the signature on the deed in question being found to be a forgery.

COMMENTARY: It is not noted what the testimony was that was not permitted or why.

1181. *Benedict v Seasille Equities Corporation et al.*, 190 A.D.2d 649 (App. Div. 2 Dept. NY 1993)

"Also unpersuasive is the plaintiffs' contention that they were denied a fair trial because the trial court allowed the defendants to adduce evidence from a handwriting expert, James Horan, notwithstanding noncompliance with the provisions of CPLR 3101 (d) (1) (i). A review of the record establishes that it was only during the presentation of the plaintiffs' case that evidence was adduced indicating that photocopies of Richard Friedman's signatures had been affixed to the purported contracts by some mechanical means after the purported contracts had been executed by the plaintiff George Benedict. This testimony, as the trial court found, 'came as a surprise' and constituted 'good cause' for the exercise of its discretion under CPLR 3101 (d) (1) (i) to permit expert testimony on the issue (see, *Simpson v Bellew*, 161 AD2d 693)."

COMMENTARY: Since only the allowing of Horan's evidence was claimed an error, nothing other is said about it. It is a safe assumption that, if he had not given persuasive evidence that the contracts had been added to by photocopying, there would have been no complaint.

1182. *Cadet v Gobin*, 94 AD3d 1030 (NY App. Div. 2 Dept. 2012)

"During the hearing before the JHO, the plaintiff testified that she did not sign the

deed and transfer documents which conveyed the property to Gobin. She also presented the testimony of a handwriting expert, who testified that the Plaintiff's signatures on these documents were forged. The defendants failed to present any credible evidence that the documents were not forged."

COMMENTARY: The above citation is from a later case that relates to this one in what seems to be a complicated series of trial court decisions and appeals.

1183. *Felder v Storobin*, Slip Op 06142 (App. Div. Supreme Ct. NY 2 Dpt. 2012)

Felder unsuccessfully attempted to invalidate Storobin's petition to run as a Republican for the state senate. Among other contentions Felder challenged the authenticity of five signatures on the petition.

"Jeffrey Luber, a handwriting expert called as a witness by Felder, testified that each of these five signatures was forged, based upon his comparison of the designating petition with the voter registration records maintained by the Board of Elections. He described the differences in signatures as great and glaring. With respect to four of the signatories, the exemplar signatures from the Board of Elections were 28 years old, 20 years old, 19 years old, and 12 years old, respectively.

"Luber conceded in his testimony that a person's signature may change with time and age. Felder did not call as witnesses any of the voters in question, and did not produce comparative signature evidence more recent than that set forth in the records obtained from the Board of Elections.... [T]he Supreme Court found Luber's testimony insufficient to meet the burden of proof for fraud, particularly in light of, inter alia, the significant gaps in time between the dates of the voters' exemplar signatures from the Board of Elections and the signatures on the designating petition"

COMMENTARY: One wonders whether Luber requested better and more exemplars but did the honest best he could with what he had.

1184. *Lumpkin v Fischer*, 93 A.D.3d 1011, 940 N.Y.S.2d 344, 2012 NY Slip Op 1852 (App. Div. Supreme Ct. NY 3rd Div. 2012)

At page 1012: "While petitioner disputes the credentials of the correction officer who performed the handwriting comparison, it was sufficient that the Hearing Officer, as trier of fact, made an independent assessment of the handwriting samples and noted the similarity on the record (see *Matter of Collins v Fischer*, 89 AD3d 1355, 1356 [2011]; *Matter of Mills v Fischer*, 65 AD3d 1427, 1427 [2009])."

COMMENTARY: The court of appeal sidesteps the challenge to qualifications as a handwriting expert by citing the legal rule that the trier of fact is the ultimate expert in handwriting and does not need assistance. This expert opinion of the trier of fact does not admit of a contrary expert witness nor cross-examination. It seems to me to be a situation where defendant by law may not confront his accuser nor defend himself against new evidence that need not be given in open court since the rule applies to both bench trials and jury trials and permits the comparative examination be made during deliberations by the fact

finder, whether judge or jury.

1185. *People v Callicut*, 101 A.D.3d 1256, 956 N.Y.S.2d 607, 2012 NY Slip Op 8578 (App. Div. Supreme Ct. 3 Dept. 2012)

With two others Callicut went looking for someone to rob, and he killed the victim. Police interrogated him while denying him legal counsel, so his oral confession was stricken. However, he wrote two letters from prison admitting to his crimes. These were not stricken since they were entirely voluntary, and a handwriting expert's testimony was proper.

At page 1263: "Defendant next contends that Supreme Court abused its discretion in permitting the People to provide opinion testimony from a handwriting expert as to whether defendant authored the letters sent from prison. The expert explained to the jury that, after he obtained copies of the letters (the 'disputed' writings), defendant was directed to rewrite them five times in his presence (the 'known' writings). Based upon his assessment of a number of characteristics found to be consistent between the disputed and known writings of defendant, the expert opined that defendant had authored the letters."

COMMENTARY: The attenuated description of the expert's method suggests several avenues of enquiry on cross-examination. For example:

Q. Is each "consistent" characteristic significant for identification?

Q. Does the combination of these characteristics amount to a personal and unique set of identifying traits for Callicut and no other?

Q. Why was Defendant made to write five copies of the letters?

Q. What instructions were given as to how to write them?

Q. In the resulting five copies amounting to 10 or more pages, are there any significant differences? If so, what reasonable explanation is given for each of them?

2014

1186. *Ginty, et al., v American Funds Service Company, et al.*, 2014 NY Slip Op 07394 (App. Div. Supr. Ct. NY, 3 Div. 2014)

COMMENTARY: This case does not involve testimony, but I include it since the reason for the Court's dismissal of Defendants' expert affidavit is quite common.

"[P]laintiffs submitted an affidavit and report from a handwriting expert who conclusively opined that the signature was not made by decedent. This proof established the absence of any material issues of fact." On the other side, "Defendants also submitted the affidavit of a handwriting expert, but she merely questioned whether the opinion of plaintiffs' expert was based on properly authenticated documents. She did not address the central question of whether decedent's signature on the application was authentic."

Of several quizzical aspects of the Court's opinion, I will address only one that I believe is used as a handy excuse for deciding cases on what I believe is a spurious reason. If Defendants' expert did not merely question proper authentication of documents used by

the opposing expert but provided compelling reasons for the lack of authentication, she merely knocked the props out from under an assertion of conclusive proof which then becomes merely an agreement with one's client. Consequently, the assertion that "this proof established" anything becomes a decision based on bias, however unwitting the bias may be. It would be a case of a self-assured opinion being taken as an expert opinion though of questionable reliability in accord with technical standards in the applicable discipline.

I suggest that the attorney find out if one's expert can form a reliable, explicit opinion about the expert fact at issue and present it if it be possible. In this case that would be whether or not the disputed signature was genuine. If the expert cannot properly form such an opinion for any reason, then be very clear in the argument that the other side's expert opinion is technically unreliable because some generally recognized standard in the discipline has not been satisfied. Explain very clearly why. Top it off with a reworded and explicit repetition how the opposing side has not met its burden of proof. Along with this, sanitize your case by eliminating testimonial statements in any format of less than supportive evidence for your case. Let the other side develop the weaknesses in your case while developing both your own best strengths and the other side's provable weaknesses on essential points.

1187. *People v Dashnaw*, 2014 NY Slip Op 02624 (NY Supreme Ct., Appellate Division, 3 Dept. 2014)

Defendant was convicted of the double murder of Lorraine and David Donovan plus other crimes. Their bodies were discovered by state police more than a week after their murder by multiple knife stabs. A series of efforts by customers and relatives to contact them led to the discovery of the bodies. One visit to their place of business resulted in discovery of a note: "[O]n December 22, 2005, another customer arrived at the House of Pine midday and discovered a '[v]ery sloppy' handwritten note posted on the door advising that the business would not be open that day 'due to sickness of relatives' [sic]."

A handwriting expert opined that Dashnaw wrote the note based on his exemplars, including those he provided and which spelled "relatives" as "relitives." Further, the handwriting expert testified that checks of David Donovan that defendant had cashed were not made out by David, though due to poor quality of copies available Defendant could not be identified as the maker of the checks.

COMMENTARY: The story of the discovery of the bodies and the extent of the wounds with other evidence at trial are given. David's wounds showed that he had endeavored to defend himself.

1188. *People v Fonvil*, 2014 NY Slip Op 02792 (NY App. Div. Supreme Ct. 2 Dept. 2014)

Defendant's conviction for four misdemeanors, out of 83 indictments (mostly felonies) related to gathering signatures for petitions for political candidates, was reversed since the jury decision was against the great weight of the evidence, as it did not amount to proof beyond a reasonable doubt. Some of the evidence related to the writer of voter

signatures:

“The People presented the testimony of a number of individuals whose names appeared on the subject designating petitions, but who testified that they had not signed the petitions or that they did not recognize their signature. Certain of these witnesses recalled having contact with the defendant at some point during the petition process, but denied signing their names themselves, or testified that they signed for someone else. Other witnesses denied any interaction with the defendant. The People also presented, over the defendant's objection, the testimony of a member of the United States Secret Service, who testified as an expert in the area of forensic document examination. The expert, who testified that she had not examined the handwriting of any of the individuals whose names appeared on the subject designating petitions, opined that it was ‘possible’ that one of the signatures attributed to a voter had been signed by the defendant.”

COMMENTARY: I reproduce the entire relevant paragraph to emphasize a point on which I agree with the critics of handwriting expertise. The handwriting examiner apparently studied the signatures on the petitions for the sole purpose of finding which had been written by Defendant. First, the examiner should have studied the signatures in question to see if they had any identifying feature(s) in common. Only then could one hypothesize that they might have a common author. Second, the genuine signatures of the voters should have been compared to the signatures on the petitions, both to ascertain whether the petition signatures were genuine and to be sure all reasonable suspects, namely Defendant and the person whose name it was, had been treated fairly and equally, thus avoiding at least one bias. Thirdly and lastly, the stage would be set for an objective and technically correct comparative examination between Defendant's identifying writing traits and those in the petition signatures whose origin had not already been resolved or found incapable of determination.

Hopefully this particular examiner is not an indication that the fine method used by Lynn Bonjour in *U.S. v Velasquez* has been abandoned in favor of ineptitude and subjectivity. A shrewd cross-examiner could use this case in challenging another examiner from the Secret Service in the way the examiner in this case should have been challenged by defense counsel.

1189. *People v Shoemaker*, 2014 NY Slip Op 05211 (App. Div. Supr. Ct. NY 3 Dept.)

Defendant's convictions of first degree murder and six counts of grand larceny by use of forged checks was affirmed. Due to references to the entirety of the evidence, the complete paragraph relevant to handwriting expertise is quoted:

“With respect to the larceny convictions, a handwriting expert testified unequivocally that all six checks were forgeries. The expert also opined that they were consistent with having been written by defendant. Further, a voided check from the victim's business account and a sheet of paper with the victim's name written out multiple times were found at defendant's residence, suggesting that someone there had been practicing signing the victim's name. The evidence also conclusively established that defendant had personally

cashed each of the six forged checks at the bank. While defendant argues that the six forged checks were consistent with the victim's history of providing her with funds for her businesses, an examination of defendant's business and personal accounts revealed that she had not spent the money on her trucking business, but had instead purchased, among other things, a car, car trailer and camp property. The evidence also indicated that, contrary to defendant's contention, the victim was unaware that the checks had been written. He kept complete records of his business account, including a record of various transactions in May 2009 and three checks he had written to defendant in June 2009 to cover expenses related to her trucking business, but there were no entries in his records for any of the six forged checks in question. When initially informed by the bank of the overdraft caused by the sixth check, the victim indicated that he was unaware of the check. Considering this evidence in a neutral light, defendant's larcenous intent is readily inferable and the verdicts convicting her of grand larceny in the third degree are not against the weight of the evidence [case citations omitted].”

COMMENTARY: Elements of the handwriting evidence given above come up in other cases now and again. For example, I have had several cases where the practice forgeries were discovered either in original ink writing or by indented writing. In cases of cashing a questioned check, a couple of times bank security cameras cleared a suspect. Tracking moneys received by someone in and out of financial accounts is a specialty well worth considering. With enough serious consideration, leads can most often be developed that were not originally in plain sight. At other times, what was in plain sight might have been overlooked or discounted. I have had clients and attorneys argue with intelligent suggestions either because they would require work and/or expense or the opposing party would come up with some creative objection. While it is always a good idea to look at things from the opponent's perspective, it is generally not a good idea to champion it.

1190. *Roxborough Apartments Corp. v Kalish*, 2014 NY Slip Op 50277(U) (Supr. Ct. App. Term. 1 Div. 2014)

In a blessedly short, one-page decision, *Kalish*, Plaintiff's tenant, has her win at trial affirmed. Her elicitation of an “unrebutted opinion testimony from a handwriting expert” as to the genuineness of the prior landlord's signature on a 1943 lease agreement with her grandfather was credited.

COMMENTARY: A case of routine admissibility, but unhappily not a routine brevity in appellate court verbosity.

1191. *In the Matter of Paul C. VanSavage v Jones, et al.*, (Proceeding No. 1.); *In the Matter of Jones, et al., v Peterson, et al.*, (Proceeding No. 2); 2014 NY Slip Op 05930 (App. Div. Supr. Ct. NY 3 Dept. 2014)

VanSavage sought to have Jones removed from a Republican primary ballot where they opposed each other. He attempted to do so by showing that Jones participated in fraud in filing several signatures on various petitions that he knew were by one person.

“Here, VanSavage contends that Jones participated in the fraudulent activity himself inasmuch as, while collecting signatures on petitions, he falsely attested to signatures he knew to be nonauthentic. To that end, VanSavage presented a handwriting expert who testified that, on various pages on which Jones was the subscribing witness, several of the signatures were written by the same person.”

VanSavage did not prove Jones knew some signatures were by the same person. Review of the arithmetic involved ended with Jones having the required number of petition signatures.

COMMENTARY: An expert could well prove a physical fact that the opposing party does not dispute once the evidence is shown. However, the requirements regarding intent and prior knowledge and such, are not automatically established. Jones offered satisfactory explanation how he could have accepted signatures of several people as valid though signed by the same person. One must explicitly address each criterion for proof of one’s legal theory to assure all has been covered. Apparently VanSavage assumed that proving the physical falsity of petition signatures sufficed to prove fraudulent intent and personal knowledge of the falsity.

2015

1192. *People v Harris*, 2015 NY Slip Op 5025 (NY Div. 4th Dept 2015)

“We reject defendant's challenge to the severity of the resentence in appeal No. 1 and, finally, we conclude with respect to appeal No. 3 that the court properly denied defendant's CPL 440.10 motion. In that motion, defendant alleged, inter alia, that he had informed defense counsel before trial that some of his signatures on the statements had been forged. He thus alleged that defense counsel was ineffective in failing to retain a handwriting expert. Attached to the motion were reports from a handwriting expert, who had been retained by defendant's family after trial. At the hearing on the motion, however, defense counsel testified that he first learned of defendant's allegations of forgery when defendant testified at trial. ‘The conflicting testimony with respect to whether trial counsel had been informed about the [alleged forgery] prior to the trial presented an issue of credibility for the hearing court[,] and we decline to disturb the resolution of that issue’ (*People v Castaneda*, 198 AD2d 292, 293, *lv denied* 83 NY2d 870). Moreover, the testimony of defendant's proposed handwriting expert was suspect and of little probative value inasmuch as it was internally inconsistent, contradicted in parts by the expert's own reports, and contradicted by defendant's own testimony. We thus conclude that defendant has failed to demonstrate that the expert testimony ‘would have assisted the jury in its determination or that [defendant] was prejudiced by its absence’ (*West*, 118 AD3d at 1451 [internal quotation marks omitted]; see generally *People v Hobot*, 84 NY2d 1021, 1023-1024). Defendant therefore ‘failed to meet his burden at the hearing on the motion of proving by a preponderance of the evidence every fact essential to support the motion’ (*People v Smith*, 16 AD3d 1081, 1082, *lv denied* 4 NY3d 891, quoting CPL 440.30 [6]).”

COMMENTARY: I can understand the reluctance of judges to name expert witnesses every time their testimony is criticized or rejected, since there could be an honest mistake which might be the judge's as well as anyone else's. In a case like this, however, I believe the expert should be named both to inspire the witness to clean up one's practice and to alert potential clients of trouble ahead. There is much complaint about inadequacies of forensic testimony, but rarely any downside for the forensic expert in even the most egregious inadequacies.

1193. *Powell, et al., v Tandy, et al.*, 2015 NY Slip Op 6628 (NY App. Div. Supreme Ct. 2 Dept. 2015)

COMMENTARY: The trial court heard, then discounted, testimony by a handwriting expert.

1194. *Taveras v Prieto*, No. A-3490-12T3 (NY Super. Ct. App. Div. 2015)

The wife filed suit in a bench trial to set aside a Property Settlement Agreement from her divorce. Part of her evidence was a questioned document examiner who testified on direct that "Noting that his conclusion was not 'the most ironclad' because he had seen no original standard documents and because he was dealing with two initials so 'there's far less information in two initials than there are for example in a complete signature.' The expert concluded 'there was reason to suspect these initials.' In response to a cross-examination question by defendant, the expert said he was suspect 'of all five' sets of initials"

COMMENTARY: The judge discounted the expert's testimony and upheld the agreement.

2016

1195. *Matter of Close v Nitido*, 2016 NY Slip Op 407 (NY App. 2016)

COMMENTARY: The opinion of a handwriting expert was received.

FF. NORTH CAROLINA CASES.

1. North Carolina Trial Courts.

I have no cases for North Carolina trial courts.

2. North Carolina Courts of Appeal.

1996

1196. *Gaddy v Calhoun*, No. COA95-937 (NC App. 1996)

COMMENTARY: Teresa Dean, certified by NADE, was properly admitted as a

handwriting expert. She did not have to have training in detecting fraud for the court to find fraud based on her opinion that signatures to two deeds were not written by decedent.

2000

1197. *North Carolina State Bar v Harris*, N.C. Court of Appeals, 527 S.E.2d 728 (NC Ct. App. 2000)

A member of a hearing committee did not act as a handwriting expert in bringing similarities to the attention of the handwriting expert. The expert said that there “was no possible way” Capps, the client whose settlement check defendant was accused of appropriating to his own benefit, could have signed the release. But the expert could not say who wrote Capps’ signature.

COMMENTARY: I suspect the expert could not distinguish pictorial resemblance from manner of executing of the resemblance. Naturally there must be some similarity between a genuine item and its imitation. Otherwise, it is not an imitation. To say it another way, an imitation is, strangely enough, imitative, even among imitated signatures.

2002

1198. *In the Matter of the Will Of Cornelius Winston Allen*, 148 N.C. App. 526; 559 S.E.2d 556; 2002 N.C. App. LEXIS 33 (2002 N.C. App.)

“Caveators contend that ‘uncontradicted expert testimony established that Mr. Allen did not write the entire will,’ entitling them to directed verdict on this issue. At trial, a handwriting expert testified that the disputed phrases did not appear to be in Mr. Allen’s handwriting. However, we are not persuaded by caveators’ [*7] contention that the authorship of the phrases was conclusively shown by caveators’ expert testimony. Several other witnesses testified to their understanding that Mr. Allen added the phrase about ‘wife Valerie’ after the will was initially executed. Moreover, it was not disputed that Mr. Allen died some eight years after writing the main body of the will, and had suffered a stroke before his death. Under these circumstances, Mr. Allen’s handwriting may have changed between the original execution of the will and any later additions. We note that the handwriting expert had not examined any other exemplars of Mr. Allen’s handwriting.”

COMMENTARY: The last sentence suggests only the unquestioned parts of the will were compared to the questioned parts. If so, the expert was ill advised or, a common occurrence, the client failed to satisfy a request for more writings. The medical literature is rich in research and case reports of the effects of health factors on handwriting, some items specific to cerebral accidents and resulting changes in writing ability.

1199. *State ex rel. Pilard, et al., v Berninger, et al.*, 571 S.E.2d 836 (CT. App. NC 2002)

At page 839, description is given how Berninger, who lived with Decedent as his wife, sent to Centura Bank a signature card establishing a joint account for her and Decedent

that was “a hundred percent (100%) right of survivorship account.” Berninger then transferred funds from the existing 50% right of survivorship account. The dispute resolved to whether Decedent’s signature on the new signature card was genuine.

“Plaintiffs presented expert testimony in the field of document examination to the effect that the purported signature of decedent on the 1992 signature card was not, in fact, decedent’s signature. Plaintiffs themselves also testified that the signature was not their father’s, and that decedent was incapable of having signed his name at the time the new signature card was executed.”

COMMENTARY: Decedent’s children, the plaintiffs, prevailed.

2003

1200. *Freeman v Freeman*, 155 N.C. App. 603, 573 S.E.2d 708, 2002 N.C. App. LEXIS 1575 (NC App. 2002); review denied, 2003 N.C. LEXIS 696 (NC 2003)

“In the instant case, defendant produced not only her own testimony, but also evidence of several circumstances inconsistent with her having signed the return of service. Defendant testified that she had never been to the Alamance County courthouse, where the return of service must have been signed within the two-minute window between the filing of the complaint and the filing of the return of service. Although plaintiff presented a handwriting analysis expert who stated his opinion ‘based on a reasonable degree of scientific certainty,’ that the signature on the acceptance of service was defendant’s, defendant also presented testimony by another handwriting expert, [*9] who stated that he could not with any degree of scientific certainty say that the questioned signature was defendant’s. In fact, defendant’s expert also testified that the contested signature had some characteristics in common with Bernice Freeman’s signature on the verification accompanying the divorce complaint. Defendant testified that Bernice Freeman had signed her name to documents on other occasions.”

COMMENTARY: Defendant’s expert appears to have done a more thorough job and expressed the opinion more conservatively than did Plaintiff’s expert. The imprudence of permitting another to sign one’s name is illustrated. The plaintiff’s expert may well have had a pool of exemplars with a number of defendant’s signatures that had been written by decedent.

2005

1201. *State v Wilson*, 2005 N.C. App. LEXIS 2273 (NC App. 2005)

At [*16]: “Before the expert testified, the State and defendant entered into a stipulation in which they agreed that if the State’s expert witness, Jeffrey S. Taylor, [*16] were called to testify, he would testify that he compared the signatures on (1) a Roadway Express visitor log and delivery receipts dated 10 July 2003 and 31 July 2003 with (2) signatures known to have been made by defendant. The stipulation then stated ‘that

Mr. Taylor's opinion is that the defendant probably signed his name where it appears on the Visitor's Log and the two Delivery Receipts.' The State offered the stipulation as part of its case; Taylor did not testify."

At [*17]: "Defendant argues on appeal, however, that he particularly needed an expert witness because the report 'disclosed for the first time that the expert had compared Defendant's signature with a photocopy of Defendant's driver's license, and had concluded that the signature on the license was of questionable origin.' He asserts that he 'was entitled to sufficient opportunity to refute this potentially damaging testimony.' Since this opinion of the expert was never admitted into evidence, defendant has failed to demonstrate any prejudice."

The stipulation was received in evidence, but defendant may not assign error to acceptance of his own stipulation.

COMMENTARY: When the handwriting expert's opinion is stipulated to, it is as much of the evidence in the record as if he had testified in person. Defendant's motion *in limine* to exclude the expert's testimony was denied.

1202. *Taylor v Abernethy, et al.*, 149 N.C. App. 263, 560 S.E.2d 233, 2002 N.C. App. LEXIS 182 ; review denied, 356 N.C. 695, 579 S.E.2d 102, 2003 N.C. LEXIS 156 (2003); appeal after remand, 2005 N.C. App. LEXIS 2281 (N.C. Ct. App., Oct. 18, 2005); appeal dismissed, 360 N.C. 367, 630 S.E.2d 454, 2006 N.C. LEXIS 120 (N.C., Mar. 2, 2006); *certiorari* denied, 360 N.C. 367, 630 S.E.2d 454, 2006 N.C. LEXIS 233 (N.C., Mar. 2, 2006)
2002 N.C. App. LEXIS 182:

This concerned an alleged contract to make a will in favor of a creditor. Court summary reads in part: "(3) opinion testimony of handwriting analyst was admissible to prove authenticity of signature...."

Defendant claimed signature in question was forged. At page 235: "On rebuttal, plaintiff called handwriting expert Charles Perrotta to testify to the validity of Romer's signature on the 10 July 1978 contract. The trial court...would not allow him to render an opinion on the authenticity of the signature...."

At page 238 is reported the defense argument that, while holding handwriting analysis in general as being not scientific, the Trial Court considered Perrotta as a qualified expert but did not consider his methodology, which was testified to in detail, to be reliable. There was no showing "that there has been any kind of scientific examination of the ability of people using this methodology to arrive at the correct result." It had been used for years, but there was no scientific basis for it beyond that use.

At page 239 the Court of Appeals replies. On the contrary, case law only requires the expert be "better qualified than the jury.... There is simply no requirement that a party offering the testimony must produce evidence that the testimony is based in science or has been proven through scientific study." Rules allow expert testimony based on "technical or other specialized knowledge," not merely scientific knowledge. The gatekeeper role merely

requires asking whether the testimony is “sufficiently reliable,” not whether it is scientifically reliable.

North Carolina adopted *Daubert* in *State v Goode*, 341 N.Car. 512, 461 S.E.2d 631 (1996). “In making this determination of reliability, our Supreme Court noted that our courts have focused on the following indicia of reliability: ‘...the expert’s use of established techniques, the expert’s professional background in the field, the use of visual aids before the jury so that the jury is not asked to sacrifice its independence by accepting [the] scientific hypotheses on faith, and independent research conducted by the expert.’” Then at page 240: “The record sufficiently establishes that Perrotta’s testimony meets the four indicia of reliability set forth in *Goode*.” It was error in law for the Trial Court to exclude Perrotta’s testimony, and so the matter was remanded for a new trial.

2005 N.C. App. LEXIS 2281:

The rulings regarding expert handwriting testimony are affirmed. However, since the trial court refused to submit certain questions to the jury as defendant requested, the case was remanded for a new trial.

COMMENTARY: The indicia of reliability given in this case seem far more practical and reasonable, with more universal application, than the *Daubert/Kumho* criteria. Certainly, one might argue in a Federal court they would be the most reasonable criteria for most expert evidence which deals with an everyday reality and addresses practical matters that most people have some experience with. Most important, the eminently sensible view that technical and practical expertise needs only a technical and practical basis for reliability, not a theoretical, scientific basis, should appeal to most fair-minded judges.

The idea, that a historical fact of court acceptance for a standard forensic expertise should be discarded in favor of a very recent theoretical fabrication of what makes science to be science, requires two most unreasonable conclusions. First, all the great scientists of history were not scientists at all, and there were no scientists until Popper and his followers put their blind faith into his most unempirical theories of what constitutes empirical science. Second, courts for hundreds of years have been utter fools in the vast majority, if not all, of their rulings on expert evidence. Both these inescapable, logical conclusions of the position of the anti-expert experts show how terribly impertinent and pretentious they truly are. They are as the gad flies of ancient Athens, biting the rumps of mighty steeds, and they will sooner or later be generally recognized as such. I refrain from using the term the philosophers of Athens applied to St. Paul and which is translated as “babbler,” although the critics’ writings, so repetitious of themselves and each other by prolifically picking up and dropping similar ideas and similar expressions, fit the Athenian bird analogy quite well.

2007

1203. *State v Burke*, 185 N.C. App. 115, 648 S.E.2d 256, 2007 N.C. App. LEXIS 1738 (NC App. 2007)

“On 3 March 2005, Ms. Capps was summoned to the clerk’s office, where she

learned that the order in the file had been changed to match the one sent to her by Southport Concrete. Defendant was asked to provide handwriting samples, which Captain John P. Roggina of the New Hanover County Sheriff's [*3] Department analyzed. Upon Captain Roggina's written opinion that the handwriting of the altered portion of the court order was consistent with defendant's handwriting samples, defendant was arrested and charged with the felony of intentionally and materially altering an official case record.

"Based on the undisputed facts, a jury could rationally have concluded that defendant was the individual who swapped the pages in the court order. First, the handwriting expert's opinion was that defendant wrote the handwritten parts of the altered page. Second, defendant was the only one who had a motive to swap the documents; the swap gave him a benefit that he sought before the swap occurred. Finally, defendant's communication with an employee at Southport Concrete revealed that he was aware of the language that was added to the altered [*7] order and the benefit it accorded him. On these facts, we hold that there was sufficient evidence to take the case to a jury. Accordingly, the trial court properly denied defendant's motion to dismiss."

COMMENTARY: This is a good example how expert evidence mostly works, as a piece in the larger evidential puzzle. "Consistent with" can be a dangerous phrase since in itself it neither identifies nor eliminates a suspect. The expert might demonstrate many significant differences in a questioned signature that definitely eliminate the purported writer. The cross-examiner then asks is the i-dot "consistent with" the purported writer's i-dots. Well, yes. Then jury argument is that the expert proved the purported writer is the real writer, because when pressured he agreed the signatures were "identical."

2009

1204. *Henson v Green Tree Servicing LLC*, 676 S.E.2d 615, 2009 N.C. App. LEXIS 814 (NC App. 2009)

"At trial, Mrs. Henson claimed that she did not sign the Agreement and that her signature was forged by an unknown person on behalf of defendant. She further claimed that no [*5] one advised her of any type of storage lien on the mobile home. Plaintiffs' handwriting expert testified that 'Nancy Henson probably did not sign . . . [the Agreement].' Plaintiffs' expert did not say who signed the Agreement."

COMMENTARY: "Taken in the light most favorable to plaintiffs, there was not more than a scintilla of evidence that plaintiffs' claims could be asserted against defendant.... Accordingly, the trial court did not err in granting defendant's motion for directed verdict." The handwriting expert was Teresa Dean of NADE. Since courts cited herein equated "probably" with "preponderance of the evidence" or "more likely than not," one is hard put to understand how a jury believing the expert would not rule for plaintiffs, and thus there seemed to be a triable issue.

2010

1205. *State v Melvin*, No. COA10-264 (Ct. App. NC 2010)

Defendant claimed inheritance of land from her grandparents. However, other heirs who had to sign the general warranty deed said their signatures on it were forged. Defendant claimed her handwriting expert, Charles Perotta, had not had opportunity to make a proper examination of the document. The trial and appeal courts found that not to be so, so her conviction for common forgery was affirmed.

COMMENTARY: Advice to forgers: Do not forge a document whose use will alert all those whose signatures you have forged. Do not be like Clifford Irving who forged an alleged autobiography by Howard Hughes while Hughes still lived and was more than capable of realizing he had had nothing at all to do with Irving. So if you lack enough moral integrity to abstain from forgery, at least do not add a lack of basic smarts.

2012

1206. *Meadlock v American Family Life Assurance Company of Columbus and Carter*, No. COA11-1009 (Ct. App. NC 2012)

Plaintiff filed for death benefits on his deceased wife's life insurance with Aflac, which denied it on basis she had made a false statement about her health on her application. Meadlock said his wife had not signed the application.

"In support of his position, Plaintiff produced an affidavit from a handwriting expert, Emily Will (Ms. Will), concerning the authorship of the signature on the application. Ms. Will examined known examples of Mrs. Meadlock's signature and the data available from the Topaz device. It was the opinion of Ms. Will that:

"Because there are both similarities and differences in the comparisons of the known and questioned signatures, and because the data captured and reported by both Aflac and the opposing expert is incomplete and questionable, it is my opinion that according to the principles of forensic document examination no conclusion of authorship of the questioned Terri W. Meadlock signature is possible."

"Plaintiff also produced an affidavit from Ms. Gaebel, who was an office manager for Mrs. Meadlock for 'several years[.]' Ms. Gaebel stated in her affidavit that, from her duties as office manager, she was familiar with Mrs. Meadlock's signature. Ms. Gaebel also stated that she had 'reviewed the Signature Page of the Life Insurance Policy for [Mrs.] Meadlock... and it [was] [Ms. Gaebel's] opinion that the signature [was] not that of [Mrs.] Meadlock.'

"Defendants provided the deposition testimony of both Ms. Mason and Mr. Carter, who stated that they did not participate in any scheme to mislead Aflac by providing misrepresentations in the application. Further, each testified that they personally saw Mrs. Meadlock sign the application using the Topaz device. Defendants also presented the expert opinion of William Flynn (Mr. Flynn), a handwriting expert, who opined that the

signature on the application was that of Mrs. Meadlock.”

Summary judgment was properly granted to Aflac since decedent was aware her statements were false.

COMMENTARY: This case reminds us we must distinguish between legal reliability of copies and their forensic reliability. I suspect at times standards of their legal reliability are taken as determining their forensic reliability. The issue of digital signatures written on signature pads will offer much opportunity for forgery and for examiners on the fringe to go happily either way as the fiscal winds blow for them. I would not rank Mr. Flynn, now retired, among such. He wrote the finest portions of the otherwise questionable book, *Scientific examination of questioned documents. Second edition*, edited by Jan Seaman Kelly and Brian S. Lindblom.

Ms. Will is certified by both NADE and BFDE, and she has served in various capacities in both AFDE and NADE. I would hazard that she and Flynn demonstrated how reasonable minds can disagree on an issue of fact that must be determined on probabilities.

2015

1207. *Frischia and Friscia v Bank of America, N.A., et al.*, No. COA14-1125 (Ct. App. NC 2015)

Inter alia, Plaintiffs’ complaint included:

“57. Plaintiffs enlisted the services of Charles E. Perrotta, a handwriting expert, who determined that the initials on the Note were clearly forged.

“58. Plaintiffs’ expert clearly shows a forgery was perpetuated in an attempt to doctor the Note.”

COMMENTARY: Defendants prevailed on motion to dismiss the complaint.

3. North Carolina Supreme Court.

1994

1208. *State v Moore*, 440 SE 2d 797, 335 N.C. 567 (NC 1994)

Blanche Kiser Taylor Moore was convicted of murdering a boyfriend by arsenic poisoning and sentenced to death, conviction and sentence both being upheld on appeal. However, that understates the scope of her full accomplishments. Her husband took ill and was found to suffer from arsenic poisoning. The ensuing investigation resulted in the exhumation of the bodies of her father, first husband, and former boyfriend, all testing positive for arsenic. At trial Moore offered the alleged death bed confession of one Garvin Thomas. Unfortunately, a document examiner was involved.

At page 805: “Special Agent Thomas J. Curran of the North Carolina State Bureau of Investigation testified concerning the investigation into a letter received by defendant in the Alamance County jail purportedly written by a man named Garvin Thomas. In the letter,

Thomas allegedly confessed to the murder of Reid and the attempted murder of Moore. Based on his examinations and comparisons of defendant's handwriting samples and those of Garvin Thomas, Agent Curran, a questioned document examiner, concluded that, in his opinion, defendant was the person who wrote the confession letter attributed to Garvin Thomas."

Another questioned document examiner almost helped the lady out also at page 805:

"Once the State rested, W. A. Shulenberger, testifying as an expert witness for the defendant, opined that defendant could not have written the confession letter. Shulenberger's examination revealed no evidence of an attempt to disguise or alter the handwriting. He stopped short, however, of stating that Garvin Thomas actually wrote the confession letter."

COMMENTARY: Handwriting experts know that, given the circumstances of the case, the confession letter would have been an imitation not a disguise. If Moore and Thomas had similar styles of writing and Moore had an above average skill at imitating, there could well be minimal indicia of falsity. The case report suggests that Shulenberger went as far as he could within the proper bounds of technical and ethical practice.

2001

1209. *State v Call*, 349 N.Car. 382, 508 S.E.2d 496, 1998 N.Car. LEXIS 848 (NC Supreme Ct 1998); death penalty affirmed, 545 S.E.2d 190, 353 N.C. 400 (NC 2001)
508 S.E.2d 496:

In reviewing a murder conviction, the Supreme Court of North Carolina states at page 510: "Defendant also claims that the warrant for handwriting exemplars was improperly issued because the application for it relied on privileged communications and because the magistrate applied the wrong standard for determining probable cause. These contentions are without merit." The communication was a note to his wife that had been left at the house of a third party, belying an intention of confidentiality.

COMMENTARY: There is no indication that the examination itself to be made of the handwriting exemplars was challenged.

GG. NORTH DAKOTA CASES.

NOTE: I have no case reports for either trial or appeal level courts of North Dakota.

1. North Dakota Supreme Court.

2005

1210. *State v Hernandez*, 2005 ND 214, 707 N.W.2d 449, 2005 N.D. LEXIS 256 (ND 2005); post-conviction relief denied, *Hernandez v State*, 2007 ND 92, 2007 N.D. LEXIS 104

“Hernandez argues the trial court erred in permitting a licensed private investigator to testify as a handwriting expert without properly exercising the gatekeeping functions required by *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999). Hernandez claims this Court must follow [*5] the *Daubert* and *Kumho Tire* decisions. Hernandez also argues the private investigator lacked the qualifications, proficiency, and scientific methodology to analyze the writing in the Spanish letter, and the court erred in allowing him to testify that Hernandez wrote the letter.

“This Court has never explicitly adopted *Daubert* and *Kumho Tire*. See *Howe v. Microsoft Corp.*, 2003 ND 12, P27 n.1, 656 N.W.2d 285. Contrary to Hernandez’s assertion, this Court is not required to follow *Daubert* and *Kumho Tire*, which involved admissibility of expert testimony in federal courts under the federal rules of evidence. This Court has a formal process for adopting procedural rules after appropriate study and recommendation by the Joint Procedure Committee, and we decline Hernandez’s invitation to adopt *Daubert* by judicial decision. See *State v. Osier*, 1997 ND 170, P5 n.1, 569 N.W.2d 441 (refusing to adopt procedural rule by opinion in litigated appeal).

“Under North Dakota law, the admission of expert testimony is governed by *N.D.R.Ev.* 702, which provides:

“If scientific, technical, or other specialized [*6] knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Rule 702, *N.D.R.Ev.*, envisions generous allowance of the use of expert testimony if the witness is shown to have some degree of expertise in the field in which the witness is to testify. *Gonzalez v. Tounjian*, 2003 ND 121, P24, 665 N.W.2d 705. An expert need not be a specialist in a highly particularized field if the expert’s knowledge, training, education, and experience will assist the trier of fact. *Myer v. Rygg*, 2001 ND 123, P14, 630 N.W.2d 62. A trial court has broad discretion to determine whether a witness is qualified as an expert and whether the witness’s testimony will assist the trier of fact. *Harfield v. Tate*, 2004 ND 45, P21, 675 N.W.2d 155. A trial court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the

product of a rational mental process leading to a reasoned decision, or it misinterprets [*7] or misapplies the law. *Rygg*, at P8. We have said we are reluctant to interfere with the broad discretion given to a trial court to decide the qualifications and usefulness of expert witnesses. *Id.* A trial court does not abuse its discretion in admitting expert testimony whenever the expert's specialized knowledge will assist the trier of fact, even if the expert does not possess a particular expertise or special certification. *Id.* at P15.

"This Court has implicitly recognized the admissibility of expert opinions about handwriting. See *State v Noorlun*, 2005 ND 189, PP15-19, 705 N.W.2d 819; *Timmerman Leasing, Inc. v. Christianson*, 525 N.W.2d 659, 663 (N.D. 1994); *In re Peterson*, 178 N.W.2d 738, 740-41 (N.D. 1970); *Klundt v. Pfeifle*, 77 N.D. 132, 139-41, 41 N.W.2d 416, 420-21 (1950). Here, the private investigator testified he had worked as an agent for the North Dakota Bureau of Criminal Investigation for almost 30 years, and in 1981 he received training for comparing questioned writing with known writing. He testified he had assisted in analyzing handwriting in 100 to 200 cases. Under our standard for the [*8] allowance of expert testimony, we conclude the trial court did not act arbitrarily, unreasonably, or unconscionably, or misinterpret or misapply the law in determining the private investigator was qualified as an expert in handwriting analysis and deciding his testimony would assist the jury. We therefore hold the court did not abuse its discretion in determining the private investigator was qualified to testify as an expert and his testimony would assist the jury."

COMMENTARY: I have cited extensively from this case in order to illustrate the kind of treatment of a disputed point one may find in the case law. This also pointedly demonstrates how far off base the critics of handwriting expertise are, both as to law and as to historical fact. A forensic expert should have familiarity with and own copies of one's own state's case law and statutes that relate to expert witnesses in general and one's own specialty in particular. This case gives guidance on both topics for handwriting experts in North Dakota. Even better than owning copies, see if the statutes and court decisions of your state are freely accessible on the Internet, as those of California are.

1211. *State v Noorlun*, 2005 ND 189, 705 N.W.2d 819 (ND 2005); affirmed, *Noorlun v State*, 2007 ND 118; 736 N.W.2d 477; 2007 N.D. LEXIS 118 (ND 2007)

For the State, Joseph Mongelluzzo testified that Noorlun had signed letters that were in question. Noorlun claimed ineffective assistance of counsel because his attorney did not call a handwriting expert to dispute Mongelluzzo's opinion. However, in denying this claim, the Court pointed out that conviction of the crime charged did not require Noorlun's signature on the principal document.

COMMENTARY: In *Noorlun v North Dakota*, No. 05-10352 (US 2006), the entire case report reads: "The petition for a writ of certiorari is denied." This is one of many examples of the closest I have come to seeing a ruling by the U.S. Supreme Court on the admissibility of handwriting expertise post-*Daubert*. As in this case, without a copy of the appeal, we cannot even know whether the handwriting issue was argued but can only infer it was left as it was.

2009

1212. *State v Sorenson; State v Nichols*, 2009 ND 147, 770 N.W.2d 701, 2009 N.D. LEXIS 150 (ND 2009)

COMMENTARY: A handwriting expert testified as to who probably did or did not handwrite on diagram of murder victims' house.

2011

1213. *In the Matter of the Application for Disciplinary Action Against Monty J. Stensland; State v Stensland*, 799 N.W.2d 341, 2011 ND 110 (ND 2011)

A criminal defendant claimed he never signed a plea agreement Stensland had filed for him and upon which he was found guilty and sentenced. A handwriting expert supported his claim, while no evidence supported Stensland's explanations.

COMMENTARY: His license was suspended for a year and he had to pay restitution to the client and costs of the disciplinary action.

HH. OHIO CASES.

1. Ohio trial courts.

1978

1214. *State v DeFronzo*, 59 Ohio Misc. 113 (OH Ct. Common Pleas, Lucas County, 1978)

Sergeant Richard Zielinski, of the Toledo Police Department Crime Laboratory, testified as an expert in three areas needed for conviction: drug analysis, firearms testing, and handwriting identification. He later admitted he had lied about his qualifications in all three areas and also about the work he had done in drugs and firearms for the case. Other cases of his came under investigation and similar irregularities were found.

Motion for new trial on basis of newly discovered evidence was denied on basis of relevant law. At page 120: "The court wishes to note, however, that the *Petro* test is being followed because the court believes it to be the state of the law in Ohio, not because the court necessarily agrees with the standard." However, a new trial was granted because of violation of due process under the Constitution and because of violation of the integrity of the court.

COMMENTARY: To show how my thinking can develop, I quote my notation for this case: "The entire case report makes worthwhile reading. Too bad it is not *Daubert* material. Maybe I should include it as warning to investigate a expert witness's claims and not simply submit to the expert's self-serving claims." I am confident more experts of all persuasions would be found inadmissible if their claimed background were more thoroughly

investigated. “More thoroughly investigated” was not meant in sarcasm, even though I do believe that often enough there is no investigation at all. A doing of nothing that neglects more suspected misrepresentations would indeed be a more thorough investigation, since the negligence would be more completely and skillfully done.

2004

1215. *Lalumiere v Bureau of Workers’ Compensation*, 2004 Ohio 5916, 2004 Ohio Misc. LEXIS 615 (Court of Claims of Ohio 2004)

At [*3]: “The court finds that the signatures that appear on the BWC forms are those of plaintiff. Forensic specialist David Hall testified as defendant’s handwriting expert. Mr. Hall performed an analysis of plaintiff’s handwriting and compared a handwriting sample prepared by plaintiff with the signatures on the BWC forms. Mr. Hall concluded that at least one of the signatures on plaintiff’s BWC application forms was hers. (Defendant’s Exhibit C.)

“Plaintiff is listed as a ‘sole proprietor’ on both application forms that plaintiff filed with BWC, making her relationship with Potters Wheel as one of an independent contractor....

“Taking into account Mr. Hall’s testimony that at least one of the signatures on the forms belonged to plaintiff, the court finds plaintiff’s testimony to be less than credible.”

COMMENTARY: If you contract with independent contractors, I heartily suggest make it absolutely, full-proof with ironclad evidence that such is the legal relation. Some sneaks seem to specialize in victimizing the least trust in the business people contracting with them. I do not intimate that matters going in the other direction all purity and innocence as newly dropped snow.

2. Ohio Courts of Appeal.

1993

1216. *Giurbino v Giurbino, et al.*, 89 Ohio App. 3d 646 (OH Ct. App. 1993)

Vickie Willard, document examiner, testified that two withdrawal slips in question were not written or signed by decedent, Connie Giurbino. However, it was irrelevant: “Mrs. Giurbino retained control and ownership over these funds after the ‘forgery.’ Thus, the alleged ‘forgery’ is of no consequence.”

COMMENTARY: This serves as a caution to attorneys and litigants: be clear on the issues one is litigating. Ms. Willard is a member of AFDE and certified by BFDE. Why fight to safeguard what is not in jeopardy, especially when abiding enmity may be the only result?

1996

1217. *State v Wilson*, 1113 OH Ap3 737, 682N.E.2 5 (Ct Ap 9 Dist OH 1996)

Defendant appealed multiple convictions, among which were nine counts of forgery. A document examiner identified Wilson and codefendant as having written portions of certain checks that victim denied having written and said were stolen. Also, defendant was identified as the one person who had made handwriting on a “Tyrone Stevens” drivers license and on back of one check.

COMMENTARY: No challenge to reliability of the document examiner is reported.

1998

1218. *State v Keith*, 1998 Oh. App. LEXIS 4990 (OH Ct App. 1998)

The ins and outs of the use of handwriting expert Phillip Bouffard are a bit complicated, but they make the report well worth the reading. In summary, Bouffard testified that two signatures on two letters available only in photocopy were so identical that one, if not both, had to be a forgery. That Bouffard withdrew one statement in his report went to the weight, not admissibility, of his opinion, since it did not affect his conclusion. Besides, defendant, an attorney, later admitted the letters were false. In Ohio, “Handwriting analysis is a proper subject of expert testimony. See *State v. Loza* (199 OH St. 3d 61, 76-77, 641 N.E.2d 1082).”

COMMENTARY: It seems that the expertise itself is reliable in Ohio, while presumably that would not mean an individual expert or a particular opinion could not be challenged. This is the same Keith as in 2000 Ohio App. LEXIS 3757, but a different prosecution. See *infra*.

1999

1219. *State v Smark*, 1999 Ohio App LEXIS 2989 (OH Ct Ap 1999)

Defendant appealed Trial Court’s ruling that her handwriting expert, Vickie Willard, could not testify before the jury that defendant did not sign the false signature to a prescription form. Since the charge was knowing possession and uttering of a false prescription, not the forging of it, Willard’s testimony would confuse the jury as to what was charged and thus the dangers outweighed the probative value. Willard gave her testimony in the absence of the jury which was that the maker of the false signature could not be identified. There was no error in not permitting her testimony to go to the jury.

COMMENTARY: The case does not constitute a challenge to the reliability of expert handwriting evidence, which in Ohio is admissible. Rather, there had to be sufficient relevancy, ability to assist the jury in deciding a fact in issue, and probative value must not be “substantially outweighed by danger of unfair prejudice, of confusion of the issues, or of misleading the jury.”

1220. *City of Toledo v Emery*, 2000 Ohio App. LEXIS 2880 (OH 6 App. Dist. 2000)

“In his third assignment of error, appellant asserts that the trial court erred in admitting the ‘go to the zoo’ document that Debra Bennett found in her newspaper. Appellant argues Bennett was incompetent to identify the handwriting in the zoo document as his. Appellant points to the testimony of his handwriting ‘expert’ that a layperson could not conclusively identify a handwriting sample. According to appellant, without expert testimony there was no foundation laid to introduce the document.

“The ‘zoo’ letter was admissible if for no other reason than it constituted [*11] evidence of a pattern of conduct which is an element of the offense. As to Debra Bennett’s testimony that she recognized the writing on the note as appellant’s, this goes to weight, not admissibility. Also admitted were unrefuted samples of appellant’s writing by which the jury could compare documents and reach its own conclusion. We cannot say that the court’s decision to admit the ‘zoo’ note or Debra Bennett’s testimony about it constituted an abuse of discretion. Accordingly, appellant’s third assignment of error is not well-taken.”

COMMENTARY: That the expert merited quote marks suggests judicial skepticism on qualifications. There has been research on the ability of lay-persons to identify handwriting, even their own. However, I know of only three such published studies dated 1937-1943, except for recent studies comparing laypersons to experts which were designed to test the experts not the laypersons. These latter tests were inspired by the facetious premise that expertise can only be established by comparing experts to non-experts. The individuals first demanding such testing postured themselves as experts on whether others are expert, as well as making other claims of expertise, while the testers claimed to be experts at testing in accord with advanced statistical and scientific methods. Neither of these two kinds of experts ever tested themselves against non-experts, and so by their own premise they were not experts at criticizing or testing the expertise of others.

1221. *State v Jessee*, 2000 Ohio App. LEXIS 4420 (OH App. 10 Dist. 2000)

“After appellant was arrested, a police detective interviewed her. The detective testified that appellant admitted she ‘stole’ the check from out of her boyfriend’s van. (Tr. 135.) The check belonged to his mother, Cynthia Yoho. Appellant [*2] took the check to the library, typed in her name as the payee, and then took the check to the Family Market and endorsed it. During the trial, a police handwriting expert testified that, in his opinion, appellant signed her name and social security number as the endorser of the check but he was unable to determine if she had signed the check as the maker. The scribbled signature line appears to read Cynthia Yoho.”

COMMENTARY: I wonder why have any prosecutorial witnesses when the defendant has already confessed to the most critical evidence of guilt.

1222. *State v Jones*, 2000 Ohio App. LEXIS 2495 (OH App. 10 Dist. 2000)

An expert on gangs testified regarding defendant's gang name, and gang hierarchy, graffiti and writings. A handwriting expert identified defendant's handwriting on documents recovered by police.

"The state also presented evidence that its handwriting expert, Detective Bennett, testified to matters beyond the knowledge and experience of laypersons. Detective Bennett explained that, based upon his twenty-seven years of experience and training, he possesses the ability to identify handwriting characteristics that serve as indicators of the authorship of [*18] a writing. Detective Bennett testified that his opinion was based on reliable, specialized information. Specifically, he based his opinion upon his analysis of handwriting characteristics such as the estimated speed of the writing, the size relationship among letters, the writer's slant, and the letter formation. Thus, Detective Bennett was qualified to give expert testimony, and any attempt by Jones' trial counsel to object to his testimony would have been futile."

COMMENTARY: It seems that the more guilty a defendant is, the more is the complaint that defense counsel did not do the futile thing. Or maybe that is how appeal attorneys have found they earn more and avoid complaints from their charges. Another maybe: If the payments from tax resources to attorneys and experts were reduced when their efforts were proven unfounded in either fact or law by a preponderance of the evidence, there might be less pre-trial wrangling, shorter trials, and reduced strain on tax revenues.

A much delayed addition to this commentary: There would be more funds for effective defense counter moves at trial after proven post-trial futilities are at least reduced.

1223. *State v Keith*, 1997 Ohio App. LEXIS 914 (OH App. 8 Dist. 1997); affirmed, 2000 Ohio App. LEXIS 3757 (OH App. 8 Dist. 2000); dismissed, discretionary appeal not allowed, 90 Ohio St. 3d 1489, 739 N.E.2d 815, 2000 Ohio LEXIS 3149 (OH 2000); discretionary appeal not allowed, 91 Ohio St. 3d 1418, 741 N.E.2d 144, 2001 Ohio LEXIS 173 (OH 2001)

2000 Ohio App. LEXIS 3757:

"Dr. Phillip Bouffard, a renowned handwriting expert, testified that the signatures on the back of the insurance checks belonged to Keith. The expert also opined that the Will in question had been typed [*3] on Keith's typewriter and that Joe Deszo's signature on the document was a forgery. Further, one of Keith's girlfriends testified that within days of Joe Deszo's death, Keith was talking about 'making it big' and disclosed his plan to back-date a fake Will."

COMMENTARY: Keith had, from his vantage point, the dubious pleasure of hearing Bouffard testify previously. See supra. I suspect that by this time Keith would have chosen an alternative term to "renowned" to describe Bouffard, who showed a versatility of talents.

1224. *State v Rumer*, 2002 Ohio 1331; 2000 Ohio App. LEXIS 6354 (OH App. 12 Dist. 2000)

“Appellant also alleges that the verdict is against the manifest weight of the evidence. Appellant contends that the testimony of the state’s handwriting expert, who [*2] stated that based on a handwriting analysis, appellant was ‘probably’ the person who forged the checks, is legally insufficient to support her conviction. The assignment of error is overruled on the basis of *State v. Thompkins* (1997), 78 Ohio St. 3d 380, 678 N.E.2d 541 and *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. It is the province of the trier of fact to determine the weight to be given to the evidence and testimony. *Id.*”

COMMENTARY: Whenever other courts considered the standard term “probably” and its force in terms of levels of proof at court, they have considered it to equate to “preponderance of the evidence” or “more likely than not.” In this case the jury apparently was permitted to consider it equal to “beyond a reasonable doubt.” On the other hand, courts have stated that in criminal cases single pieces of evidence need not be beyond a reasonable doubt to support conviction, only the entirety of the cumulative evidence. Sometimes I think that rule changes the old proverb, “A chain is no stronger than its weakest link” into “A chain is no weaker than its strongest link.”

1225. *State v Santurri*, 2000 Ohio App. LEXIS 2513 (Oh. Ap 2000)

Assignment of error that counsel did not challenge state’s handwriting expert and did not call one was overruled. One was consulted by defense and not called, but appellant did not state what the expert would have testified to. State’s expert gave an inconclusive opinion and was neutralized by cross-examination. So there was no deficiency of representation.

COMMENTARY: This is one of those cases where one wonders why the bother having the state’s handwriting expert come in.

2001

1226. *Economy Linen & Towel Service, Inc., v McIntosh*, 2001 OH App LEXIS 4145 (Oh. Ap 2001)

Defendant appealed jury verdict on contract. He contended at trial that handwritten “36” for duration of contract in months had been altered from the “0” he had agreed to. Harold F. Rodin testified as plaintiff’s expert document examiner regarding the alleged alteration. McIntosh wanted to voir dire Rodin on his background in graphoanalysis or graphology. At [*12]: “The trial court granted appellant’s motion and permitted cross-examination before any opinion was given. After receiving assurances from Economy that Rodin would not give opinions based upon graphology, the trial court did not permit appellant to ask Rodin to define graphology.” The court did not abuse its discretion. At [*13]: “The trial court was within its discretion to determine that it would not permit a detailed explanation of graphology because Rodin would not be permitted to testify concerning graphology or base his opinions on graphology.” Further, the ruling avoided confusion for the jury.

Defendant/appellant offered Andre Moenssens as rebuttal witness to Rodin, but the

trial court did not permit Moenssens to testify. Moenssens was offered to impeach Rodin regarding graphology and that Rodin had falsely claimed on his CV that he had studied with or under Moenssens. However, since Rodin did not base his opinion on graphology, that part of Moenssens' testimony was irrelevant. Since defendant had blocked Rodin's CV from being entered into evidence, the claim of study with Moenssens was not in evidence and so was not available to be rebutted. Moenssens was irrelevant on every issue he was proffered for.

COMMENTARY: This is a most instructive case. First, review your expert's entire background before trial in order to have all points of possible attack covered. Second, never abandon a good expert because of irrelevant mudslinging by the opposing expert. Third, make very clear to the trial court what is and is not the basis of your expert's opinion. When I issue a report based entirely on technical and/or scientific reasons, some opposing experts will reply in a completely off the wall fashion that, unlike them, I am not ignorant of graphology or some other aspect of handwriting, such as scientific reports in the medical literature. I immediately tell my attorney/client that, if they had had any viable reply to my opinion, they would have given it. Therefore, the fourth lesson from this case: Never panic whatever reply is mounted against your expert's intelligent and objective opinion, because, if it does not address the expert fact at issue but instead the expert personally, it is a tacit surrender to the opposing opinion and an admission of one's own inferiority as an expert hiding behind the cowardice of the gossiper.

Regarding the issue of whether Rodin had studied with Moenssens, it could well be in reference to a one-week intensive Moenssens had given to IGAS people at least twice in the 1970s with a test given on the last day. At one time government experts took a one-week course in document examination from a big name federal agency, yet Moenssens never said they were making false claims when putting it on their CV as a course of study with that agency. However, he wrote in a law journal paper that he thought IGAS people were even committing perjury in testifying that studying with him during his one-week intensive in document examination was studying with him. So never take an attack on face value, because a full look into the facts may show the attack to have little to no merit.

1227. *State v Evans*, 2001 Ohio 8860; 2001 Ohio App. LEXIS 5918 (OH App. 10 Dist. 2001); mandamus dismissed, *State ex rel. Evans v Connor*, 2006 Ohio 2871, 2006 Ohio App. LEXIS 2720 (Ohio Ct. App., Franklin County, June 8, 2006)

Three times State's handwriting expert attempted to obtain exemplars from defendant, but each time he refused, once ten minutes before the expert was to testify. The expert then used other writings that were authenticated by a combination of inferences and other facts, which was permissible.

COMMENTARY: The writings used were less than savory in content, but defendant would have avoided the jury seeing them if he had cooperated as he was obliged to.

1228. *State v Harper*, 2000 OH App LEXIS 6015 (OH App 2000); affirming sentence after remand, 2001 Ohio 8875, 2001 Ohio App. LEXIS 5969 (OH App 2001)

Detective Thomas Bennett, document examiner for the Columbus Police Department, testified that defendant had signed false names to two separate driver license applications and very probably a third. Defendant's photos on all three licenses issued in those names supported Bennett's opinion. All claims of error regarding the expert testimony were found to be without merit. Convictions for multiple counts of forgery and other charges were affirmed with remand for reconsideration of the sentences imposed.

Defendant claimed ineffective assistance of counsel for various reasons. One was that a handwriting expert was not called to testify on his behalf. The Court of Appeal notes: "Moreover, defense counsel not only sufficiently cross-examined the state's handwriting expert, but this record contains no evidence that another handwriting expert would have benefitted defendant's case." Another was lack of challenge to qualifications of the State's experts. The reply from the Court of Appeal was to quote the *Matter of Frederick J.*, 1998 Ohio App. LEXIS 2058:

"*Evid.R. 702* provides that a witness may testify as an expert if the following three conditions are met: (1) he or she is qualified as an expert by virtue of specialized knowledge, skill, experience, training or education regarding the subject matter of the testimony; (2) the testimony relates to matters beyond the knowledge or experience of lay persons or dispels a common misconception among lay persons; and (3) the testimony is based upon reliable scientific, technical, or other specialized [*22] information. The qualification of an expert depends upon the expert's possession of special knowledge that he or she has acquired either by study of recognized authorities on the subject or by practical experience that he or she can impart to the trier of fact.' *Frederick*, supra. citing *Ishler v Miller* (1978), 56 Ohio St. 2d 447, 453-454, 384 N.E.2d 296; *Evid.R. 702*."

COMMENTARY: The case text suggests Detective Bennett did quality work. That Ohio extends relevance to dispelling misconceptions the jury may have is an interesting rule. Equally of interest is that the source of expert knowledge is a study of recognized authorities or practical experience. Thus knowledge is stressed along with familiarity with the recognized authorities, but not any particular way the knowledge was attained. Too often we accept people as expert because, having attended a particular training or educational institution, "they should know what they are talking about." Unfortunately, blind acceptance of degrees, diplomas or certificates can open us up to expert assistance more damaging than the difficulty that necessitated consulting the expert.

1229. *State v Johnson*, 2001 Ohio App. LEXIS 2503 (OH App. 9 Dist. 2001)

"Second, Mr. Johnson points out that the assailant was initially seen rummaging through mailboxes at [*9] 301 Ira Avenue. When Officer Woodill questioned the individual, he stated that he had written a note to his girlfriend Dot, and put it in the mailbox. The officer retrieved a brief note to 'Dot' from 'William.' Later testimony from a handwriting expert established that Mr. Johnson did not author the note. Mr. Johnson points to this

testimony as evidence that the police apprehended the wrong man. However, at trial the officer testified that he never believed the individual authored the note. The individual identified himself as Roy Lee Brann, a fictitious name, and stated that his nickname was 'William.' Officer Woodill testified that he suspected all along that the individual actually had seen the note while rummaging through the mailboxes and used the note as his excuse for being on the premises."

COMMENTARY: It was quick thinking by the suspect but quicker thinking by the police officer.

1230. *State v Karl*, 142 Ohio App. 3d 800, 757 N.E.2d 30, 2001 Ohio App. LEXIS 2373 (OH App. 7 Dist. 2001)

The state did not disclose that its handwriting expert had found consistencies between a forged signature and defendant's writing. On cross-examination defense counsel endeavored to bring out points favorable to defendant. The prosecutor then sprung the undisclosed opinion, later claiming defense counsel had opened the door. This was found to be error, and the Court of Appeal devotes extensive discussion to the matter. Because of this and other assertions of error that were sustained, the conviction was reversed and the case remanded.

COMMENTARY: The lessons to be learned from the discussion of impermissible non-disclosure might protect an expert witness from participating in an unethical strategy by the client/attorney. One law enforcement expert, hopefully a rarity in this way, told me that in her agency they avoided disclosing the methods and bases of their opinions lest the defendant escape conviction. All experts should bring such unethical and substandard practices by an opposing expert to the attention of their clients.

2003

1231. *Hampton v Saint Michael Hospital, et al.*, 2003 Ohio 1828, 2003 Ohio App. LEXIS 11743 (OH App. 2003)

In a medical malpractice case the jury found for defendants which was affirmed upon appeal. Vickie Willard testified to some of the doctor's notes leaving traced writing on a carbonized form but others not. This was not determinative since the form could have been removed from the file. Based on other issues, defendants prevailed with jury.

COMMENTARY: The phrase "could have been removed" makes the defense argument entirely speculative. There would have to be either an obligation for plaintiff to prove the form was in the file continually or proof by defense the form had in fact been removed at the critical time.

1232. *Lewis v Smith, et al.*, 2003 Ohio 912, 2003 Ohio App. LEXIS 850 (OH App. 2 Dist. 2003)

"A handwriting expert, Richard Shipp, testified on behalf of the Plaintiff, and gave

his opinion that the signature on the questioned document, Ex. 1, was ‘probably’ written by the Defendant, Edward Smith. Mr. Shipp stated that he could not reach [*5] an opinion beyond a reasonable doubt without an original copy of the questioned document. His opinion was based on a comparison of known documents containing the original signature of the Defendant and a copy of Exhibit 1. Based on the lack of an original and the disputed authenticity of Exhibit 1, it was not admitted into evidence, and was proffered for the record by Plaintiff. Mr. Shipp further testified that it is possible to scan a signature onto a document, but he found no evidence of tampering with Ex. 1, and that the signature on Ex. 1 was not an exact match with any of the other signatures he examined. Mr. Shipp did not testify as to the authenticity of the signature of Mrs. Smith on Ex. 1. Based on the inconclusiveness of the expert’s testimony, the lack of any opinion on the signature of Mrs. Smith, the lack of an original document, the credibility of the Smiths’ testimony in which they denied signing the document, and the lack of any witnesses to their signature, the Court did not allow Ex. 1 to be entered into evidence based on *Evidence Rules 1002 and 1003*.”

COMMENTARY: I do not believe the expert’s opinion was inconclusive. He explained why he could not authenticate the signature and document and provided compelling reasons why. The very fact that the document could not be authenticated served his client well. Would that more often copies were denied admission into evidence when they prevent technical proof of their authenticity. It amazes me how often those who rely on questionable documents are rewarded because they unfortunately lost the original but carefully kept copies enough for everyone.

1233. *State v Hughley*, 2003 Ohio 5656, 2003 Ohio App. LEXIS 5051 (OH App. 8 Dist. 2003)

Convictions for theft, forgery and uttering were affirmed.

“The [forged] check was deposited at Huntington National Bank, the Brookgate branch in Brooklyn. Tony Harris, the security manager for Huntington National Bank, testified that [*3] the check was deposited into the account of Hughley and that the funds were still in the account. The transaction was caught on film showing Hughley making a deposit....

“The defense called a handwriting expert who testified that the signatures on the check were not written by Hughley. On the other hand, Harris testified it is not uncommon for individuals working with spurious checks to have someone else write on the checks in order to avoid having their handwriting on forged checks. Harris ... investigated cases in which individuals have placed forged checks into their own accounts, as opposed to accounts in a place other than their banking institution.”

COMMENTARY: A case of routine admissibility and, from reviewing the next 2004 and 2008 cases of *State v Hughley*, of routine forgery.

1234. *State v Moore*, 2003 Ohio 5342, 2003 Ohio App. LEXIS 4797 (OH App. 10 Dist. 2003)

“Ann Dring, a document and handwriting examiner with the forgery and fraud unit of the CPD, testified that Detective Jackson asked her to examine the handwriting on the check and to compare it to known samples [*4] of appellant’s signature. Detective Jackson gave her seven samples of appellant’s known signatures. The signatures were on seven different cards used to record appellant’s fingerprints between 1994 and 2001. After comparing the writing on the check to the samples, Dring concluded that it was likely that the person who endorsed the back of the check also signed the fingerprint cards. She could not conclude that appellant wrote any of the words on the front of the check.”

COMMENTARY: Error was claimed because the prosecution used fingerprint cards which permitted inference of an average of per year arrest of Defendant for criminal activity. The trial judge gave a curative instruction that the jury was to make no inference from the fingerprint cards and consider only evidence presented at trial. I now offer the reader a curative instruction lest it be inferred Moore was negligent in pursuing his entrepreneurial, creative activities and sloughing off in contributing to the economy. He was indicted in August 2002 and thus involuntarily forced into an ignominious retirement until he would next be released from prison.

1235. *State v Samuels*, 2003 Ohio 2865, 2003 Ohio App. LEXIS 2601 (OH App 2003); appeal denied, 2003 Ohio 5232, 100 Ohio St. 3d 1424, 797 N.E.2d 92, 2003 Ohio LEXIS 2615 (OH 2003)

Conviction in jury trial on three counts of aggravated menacing was reversed and remanded on basis that jury had seen rap sheet and that trial judge had not adequately cured the prejudice. Claim of error in admitting handwriting expert evidence was rejected.

Two women found in their residences handwritten notes of a sexual nature describing what the writer wished to do with them. They feared assault. Samuels was arrested after his fingerprint was found on one note. A document examiner, Andrew Szymanski, concluded to a “reasonable degree of scientific certitude” that the same person wrote both notes and that “indications” were that Samuels was the writer. At ¶25: “Appellant contends that Szymanski should not have been allowed to testify as an expert, however, because he could not conclusively identify appellant as the author of the notes found in Kierman’s and Ferfolia’s apartments. Appellant contends that Szymanski’s opinion . . . was nothing more than speculation, without any reliable or scientific basis, and, accordingly, did not meet the requirements of Evid.R.702. We disagree.”

At ¶26, Szymanski said that he compared the two notes and appellant’s handwriting samples side-by-side, considering “individual handwriting characteristics, such as letter formation, connecting strokes, slants and spacing....” However, all specific features listed are types of formation; nevertheless, the Court then says at ¶27 that he considered “slant, size relationship, flow and letter formation.” But the opinion was based on specialized knowledge and the examiner’s experience and skill, and so it was not mere speculation.

COMMENTARY: This is another example of how a modest opinion can well be a very reliable, scientific opinion, because good reasons are given for it. The term “indications” seems here to have been used to mean “probably” or “more likely than not” rather than in the technical meaning ASTM terminology assigns to the word. Note that the Ohio Rule 702 matches the Federal Rules numbering. An expert witness or consultant would want to know how to access on the Internet both Federal rules and one’s own state’s current rules for expert evidence.

2004

1236. *Capital Plus, Inc., v Parker Enterprises Imperial Distribution, Inc.*, 2004 Ohio 3896 (OH Ct. App. 1st App. Dist. 2004)

“{¶¶15} In support of his argument that he had not signed the guaranty, Parker submitted the videotaped testimony of Steven Greene, a forged-document examiner for the Ohio Bureau of Criminal Identification and Investigation. Greene had been allowed to testify as an expert on forged documents in approximately 250 cases.

“{¶¶17} Based upon his examination of those three documents, Greene gave the following expert opinions: (1) that if it was assumed that Parker’s signature on Exhibit 74 was genuine, Parker’s signature on Exhibit 76 ‘[was] probably not genuine,’ and (2) that Parker’s three signatures on the documents were ‘probably identical.’ Greene explained that it was impossible for a person to sign his name the same way twice, and thus that because all three of Parker’s signatures were identical, the signature on Exhibit 76 must have either been cut and pasted or traced. Greene also explained that when he had used the term ‘probably’ in his opinion, he meant ‘more likely than not,’ which would fall somewhere greater than 50% but less than 100%.

“{¶¶18} On cross-examination, Greene testified that it was possible that Exhibit 76 contained an original signature. Greene also examined a copy of the other guaranty that Parker had produced at trial (the one with the date crossed off and the new date written in with Hopper’s initials) and concluded that Parker’s signatures on each guaranty were not identical.”

COMMENTARY: This case offers a couple of nice wrinkles on the usual expert handwriting testimony. With a knowledgeable consultant, the cross-examiner could have pressed out the wrinkles in Greene’s testimony. Three documents do not offer a sufficient basis for handwriting identification. Percentages are taboo in use of “probable” in handwriting terminology. He made an assumption as to which signature was genuine, making his opinion merely speculative. There are some rare writers who write signatures as similar in form and proportions as tracings would be. Parker complained the trial court excluded Greene’s testimony, but the case report explains how the judge considered it in making the decision.

1237. *State v Ballance*, Appeal No. C-030822. (OH 1 App. Dist. 2004)

“Ballance argues that the letters could not be tied to him because the expert document examiner at trial could not state that it was Ballance’s signature on the letters. But the expert also could not state that it was not Ballance’s signature. Regardless, even if the trier of fact did not consider the letters, we hold that there is sufficient evidence to support Ballance’s conviction for menacing by stalking, given the phone calls and visits to Rackley’s home.”

COMMENTARY: It seems that the court of appeal considered, at least tentatively, that inability to either identify or eliminate Ballance as writer of menacing letters swung the balance in favor of saying he did.

1238. *State v Hughley*, 2004 Ohio 132, 2004 Ohio App. LEXIS 122 (OH App. 8 Dist. 2004)

The case report begins: “Defendant-appellant Kevin Hughley appeals his jury trial conviction for tampering with records in violation of *R.C. 2913.42*. He was acquitted of grand theft auto, forgery, and title law violation.”

Then it describes the handwriting expert’s role: “When the investigator from the [Bureau of Motor Vehicles] went to the clerk of courts for the titles which had been filed for the car, he found a chain of three titles. One title purported to transfer the car from Auto [*4] World to the Fooses and purported to contain the signatures of the purchasers, John and Kelli Foose. The signatures on each title, however, were in different handwritings, none of which had been signed by the Fooses. On all the documents which purport to contain her signature, Kelli Foose’s name is misspelled. The titles were notarized by defendant’s girlfriend, who, along with defendant, co-owned Unique Auto. n1 The purchasers told the investigator that they had not signed the titles, and a handwriting expert testified that the signatures on the titles did not match the purchasers’ signatures. The expert testified that on one of the titles defendant wrote the signatures purporting to be those of the Fooses.”

Footnote 1 reads: “The girlfriend pleaded guilty to forging the name of Auto World’s owner on the title to John Foose’s car.”

In the end the Court of Appeal decides he was innocent since he did it all to correct clerical errors, not to defraud.

COMMENTARY: One suspects that beating the rap this time encouraged him on the following three prosecutions that are subject of the 2008 appeal case, *State v Hughley*, appeal from *State ex rel. Hughley v Cuyahoga Cty. C.P. Court*, 2008 Ohio 5882, 2008 Ohio App. LEXIS 4923 (OH App. 8 Dist. 2008); with raft of legal proceedings following. The girlfriend apparently pled guilty too quickly. Did the fact, that Hughley was acquitted for masterminding the forgeries and then his leaving her holding the bag, affect their relationship? I for one hope he eventually got what his lack of gallantry deserved. My older brother Ben taught me at least one bit of wisdom: “Time wounds all heels.”

1239. *State v Thorne*, 2004-Ohio-7055 (Ct. App. OH 5 Dist. 2004)

There are three mentions of Michael Robertson testifying as a questioned documents examiner. The one of special interest is this:

“{¶39} As to the issues concerning the business card, Mr. Robertson testified that the handwriting on the business card was not written by the same person that wrote the sample. However, there are questions as to who actually wrote the sample. Mr. Robertson did not witness the writing of the sample but merely received the sample from a woman named Sue Gless. Sue Gless did not testify at the hearing.”

As a result, on this as on all other issues on appeal, the trial court was affirmed.

COMMENTARY: The rule is that the exemplar the expert uses in making a handwriting comparative examination must be authenticated to the satisfaction of the trial judge. The statute of the relevant jurisdiction might give the legally accepted ways by which this authentication may be made, while case law generally has the same or similar rules for courts of the federal and various state systems. My monograph on exemplars gives, with much other practical information, the rules that are most often stated. It is available complimentary on <https://archive.org>.

1240. *State v Ware*, 2004 Ohio 6984, 2004 Ohio App. LEXIS 6462 (OH App. 10 Dist. 2004); discretionary appeal not allowed, 2005 Ohio 2447, 2005 Ohio LEXIS 1154 (Ohio, May 25, 2005)

Conviction for murder and other crimes affirmed.

At [*11]: “Keith Jones, an inmate with defendant, testified defendant told him a number of details about the murder. Jones even kept one of many notes written back and forth between him and defendant and turned it over to police. Handwriting expert, Ann Marie Dring, testified that the handwriting on the note was the same as a sample containing defendant’s handwriting.”

Ann Marie Dring testified as State’s handwriting expert. Appeal claimed she did not know source of sample writings and should not have been permitted to testify. She did not have to know that, besides the exhibit she opined about was not admitted into evidence due to defense objection. Challenge to her qualifications was not preserved for appeal.

COMMENTARY: I may have missed something since her opinion about a writing not admitted into evidence would seem to have gone out with the writing itself.

2005

1241. *DiNunzio v Murray*, 2005 Ohio 4047, 2005 Ohio App. LEXIS 3696 (OH App. 11 Dist. 2005); discretionary appeal not allowed, 107 Ohio St. 3d 1685, 2005 Ohio 6480, 839 N.E.2d 404, 2005 Ohio LEXIS 2862 (2005); related proceeding, *DiNunzio v DiNunzio*, 2006 Ohio 3888, 2006 Ohio App. LEXIS 3863 (Ohio Ct. App., Lake County, July 28, 2006)

COMMENTARY: The court accepted the testimony of Dr. Phillip Bouffard, a handwriting expert.

1242. *State v Bailey*, 2005 Ohio 4068 (OH 10th App. Dist. 2005)

William Bennett, a document examiner, helped defeat defendant’s alibi for the time

of a robbery. Defendant signed on top of another patient's signature in a log at a medical facility, but several pieces of evidence came together to uncover the ruse.

COMMENTARY: "Sequence of lines" is the general term used for determining which of two or more writings on a document was made before or after another. For the usual scenario the lines of the separate writings intersect each other, but other events can be involved in the sequence, such as stains from food or drink or folds or effects of routine handling of the document. The professional literature is rich in instructive papers back into the early Twentieth Century and up the most current and advanced computerized methodologies. The range of techniques from the most primitive to the most high tech offer an enquirer excellent possibilities even from the most modestly equipped lab.

1243. *State v Guy*, 2005 Ohio 6927, 2005 Ohio App. LEXIS 6241 (OH App. 7 Dist. 2005)

"Finally, a handwriting expert, Steven Greene from the Bureau of Criminal Identification and Investigation, testified in Appellant's case. Greene testified that the prosecution can order a suspect to provide a handwriting sample for comparison purposes. Using this testimony, Appellant then argued that the 'confession letter' was forged, since the state failed to request a handwriting sample from Appellant. (Tr., pp. 299-301.)

"However, Greene indicated at trial that the prosecution contacted him in this case because Appellant's counsel was arguing that the 'confession letter' was manufactured by cutting and pasting. This was the sole reason he was requested to testify. Greene concluded, however, that this was not a manufactured letter. (Tr., pp. 304-307.)"

COMMENTARY: It would seem from the context that the testimony about compelling handwriting samples would have been given on cross-examination. The case demonstrates that a handwriting expert must be expert at more things than handwriting.

1244. *State v Martin*, 2005 Ohio 688; 2005 Ohio App. LEXIS 691 (OH App. 11 Dist. 2005); discretionary appeal not allowed, 2005 Ohio 3490, 2005 Ohio LEXIS 1525 (Ohio, July 13, 2005)

"In support of his argument, appellant points to the testimony of the state's handwriting expert, Andrew Szymanski ('Szymanski') who testified the purported signatures on the documents were tracings of an original signature. Appellant also points to Szymanski's testimony that he was not able to identify appellant as the person who made the tracings.

"First, Szymanski testified he could not identify the tracing as having been made by appellant because it was a tracing, rather than a free-hand signature; in other words, the signature did not contain identifiable handwriting characteristics because it was a tracing of someone else's handwriting.

"Second, the state presented sufficient evidence to overcome appellant's motion for acquittal on the *R.C. 2925.23(A)* charges. The state presented evidence that appellant was in possession of the drug documents and he returned them to NCS. The state also presented evidence from those who had purportedly signed for the drugs. These [*14] persons testified

the signatures were not genuine. The state also presented the expert testimony of Szymanski. He concluded the signatures in question were traced. Thus, the false statement element of R.C. 2925.23(A) was satisfied viz., appellant's implicit representation that the signatures on the documents were genuine when they were not."

COMMENTARY: This is a good example of how most often the expert handwriting evidence is one part of the totality of evidence. Discussion of it takes up no more than 1/25 of the entire case report.

1245. *State v Robinson*, 2005 Ohio 6286, 2005 Ohio App. LEXIS 5631 (OH App. 11 Dist. 2005); discretionary appeal not allowed, 2006 Ohio 1967, 2006 Ohio LEXIS 1108 (Ohio 2006)

"[T]he instant case turned upon whether the jury believed Dr. Bouffard's expert witness testimony regarding whether appellant actually endorsed the back of each check. Dr. Bouffard provided his extensive professional background regarding handwriting comparisons. He then provided a step-by-step analysis of his comparison of appellant's signature and the signature on the back of each check. Ultimately, Dr. Bouffard determined that appellant had signed the back of each check.

"If believed by the jury, Dr. Bouffard's testimony would establish that, during the civil proceeding, appellant made knowingly false statements [*19] denying he had seen or endorsed either check. The jury was in the best position to view Dr. Bouffard's testimony and assign credibility to his expert witness determinations. Thus, we will not substitute our judgment for that of the trier of fact, as the evidence presented by the state was competent and credible. Appellant's fourth assignment of error is without merit."

COMMENTARY: A routine case of admissibility and, it seems, routine thoroughness by Dr. Bouffard.

1246. *State v Yeager*, 2003 Ohio 1808, 2003 Ohio App. LEXIS 1711 (Ohio Ct. App., Summit County, Apr. 9, 2003); reversed and remanded, 2004 Ohio 2368, 2004 Ohio App. LEXIS 2115 (OH App. 9 Dist.); reversed, remanded, 103 Ohio St. 3d 476, 2004 Ohio 5707, 816 N.E.2d 1072, 2004 Ohio LEXIS 2625 (2004); vacated and remanded by The Supreme Court, 9th Dist. No. 21510, 2004 Ohio 2368; rehearing upon remand, 103 Ohio St. 3d 476, 2004 Ohio 5707, 816 N.E.2d 1072, 2004 Ohio LEXIS 2625 (2004); affirmed; 2005 Ohio 4932, 2005 Ohio App. LEXIS 4464
2004 Ohio App. LEXIS 2115:

Two witnesses against Yeager received letters with threats. Detective Greg Johnson, a handwriting expert, "testified that the two letters contained unique characteristics that matched known samples of the appellant's writing. Detective Johnson further testified that, in his expert opinion, there was a better than fifty percent chance that appellant wrote the letters...."

"This Court finds that sufficient evidence was presented to support appellant's one conviction of engaging in a pattern of corrupt activity [*14] and two convictions of

intimidation. Appellant's ninth assignment of error is overruled with regard to the sufficiency argument."

2005 Ohio App. LEXIS 4464:

A Detective Williams also testified that the letters "contained unique characteristics that matched known samples of appellant's handwriting, and gave his expert opinion that it was more probable than not that appellant wrote the letters."

COMMENTARY: Let us assume, upon no basis provided for the assumption, that the impoverished description of the expert testimony is the entire sum and substance of it. "Better than 50 percent" and "more likely than not" are a very long ways away from "Beyond a reasonable doubt." The rule being that the expert evidence need not be beyond a reasonable doubt but only the entirety of the State's evidence, take note that in none of these case reports are we given what filled in the chasm between "more likely than not" and "beyond a reasonable doubt." My suspicion is that often enough the fill-in does not exist.

Additionally, in this case the anemic description of the expert opinion does not even give assurance of much more than the flip of a balanced coin or roll of honest dice. As stated elsewhere herein, we should be surprised if two writings in the same language using the same penmanship style do not have some unique characteristics that match. That is why an identification requires a complex of unique identifying characteristics, it being the only way to establish a reasonable probability of specifically individual uniqueness. Even then, the uniqueness may only fit within a limited and defined population of reasonable suspects within the instant case.

2006

1247. *State v Breckenridge*, 2006 Ohio 5038; 2006 Ohio App. LEXIS 5175 (OH App. 10 Dist. 2006); discretionary appeal not allowed, 112 Ohio St. 3d 1472, 2007 Ohio 388, 861 N.E.2d 145, 2007 Ohio LEXIS 311 (2007); subsequent appeal, 2009 Ohio 3620, 2009 Ohio App. LEXIS 3073 (Ohio Ct. App., Franklin County, July 23, 2009)

"For convenience of analysis, we will address appellant's assignments of error out of numerical order, beginning nonetheless with the first two. These are principally concerned with the trial court's admission of the expert testimony of a handwriting expert to substantiate the forgery charge. Dr. Bouffard, a forensic document examiner, [*5] testified at trial about the authenticity of patient's signatures on various documents collectively identified as State's Exhibit PE-3. Dr. Bouffard concluded that all patient signatures contained in Exhibit PE-3 were forgeries produced by tracing the original signature of the patient from other documents. At the close of the State's case, the trial court reconsidered its admission of Dr. Bouffard's testimony and excluded it. The court limited the forgery charge to the single document constituting in State's Exhibit PE-4, a timesheet submitted under circumstances that otherwise supported the proposition that the patient's signature thereon was forged, and that thus did not require the jury to rely on expert handwriting comparisons."

Defendant also claimed Dr. Bouffard was not properly qualified as an expert. Both points of error were moot since the trial court struck the testimony and instructed the jury to disregard it.

COMMENTARY: No explanation is provided why the testimony was struck. Given Bouffard's superb record as recorded in this collection of cases, I cannot image it could be any lack in knowledge, skill, education, training or experience.

1248. *State v Dach*, 2006 Ohio 3428, 2006 Ohio App. LEXIS 3378 (OH App. 11 Dist. 2006); discretionary appeal not allowed, 2006 Ohio 6171, 2006 Ohio 6171, 2006 Ohio LEXIS 3310 (Ohio, Nov. 29, 2006)

"Under his third assignment [*19] of error, appellant points out that drugs were never found on his person, in his vehicle, or at his residence. As such, appellant argues, the actual forged prescriptions provided the only probative evidentiary nexus between him and the crimes of which he was convicted. Appellant accordingly assails the reliability of the evidence put forth by David Hall, the state's handwriting expert."

At [*20] a statement of Hall's qualifications, the one- or two-week Secret Service and FBI courses plus seminars, and some of his testimony are given.

COMMENTARY: A case of an expert's admissibility which seems to be based on the usual perception that a two-week survey course in document examination is a formal training in document examination. In one case, an attorney attempted to impeach such a witness on teachings from the Secret Service survey course. Two rulings shielded the witness. First, he would have to admit to any material from the course before being asked about it, however authoritative the author. Second, it was so long ago that he took the course that he could not be required to have any recall of any of it, though he based his claim to expert knowledge partly on having learned it all and having used it now.

Please do not write to me about these interesting bits of logic. To revive a saying used when I was a child: "Don't blame me and don't ask me; I'm just a dumb country boy."

1249. *State v Finley*, 2006 Ohio 2357, 2006 Ohio App. LEXIS 2207 (OH App. 2 Dist. 2006)

"Additionally, preceding Finley's trial, Knapp met with Finley, Knapp discussed more of Finley's *pro se* motions with him, Knapp explained why he thought they should ultimately not be filed, and Knapp filed four motions *in limine*, all of which were granted. During Finley's trial, Knapp attempted to rebut the State's case as best he could by objecting at appropriate times, [*13] by cross-examining most of the State's witnesses, including all key witnesses, and by presenting expert testimony from a handwriting specialist regarding the letter Galdeen wrote for Finley. All of these facts surrounding Knapp's representation of Finley suggest that Knapp and Finley communicated well enough for Knapp to prepare and present a competent defense for Finley. Furthermore, these facts show that Knapp's performance was not deficient...."

COMMENTARY: There are a number of cases where the appeal from a criminal conviction asserts inadequate representation of counsel because a handwriting expert was

not retained. In one case the court of appeal denied the error because the defendant wanted an expert to testify he did not write the incriminating document, although he had already admitted doing so.

2007

1250. *State Reynolds*, 2007-Ohio-6473 (Ct. App. OH 5 Dist. 2007)

COMMENTARY: A handwriting expert identified Reynolds as the writer of mail to a prison inmate, some of which was found to have marijuana under the stamp.

1251. *State v Silverman*, 2006 Ohio 3826, 2006 Ohio App. LEXIS 3791 (OH App. 10 Dist. 2006); discretionary appeal allowed, stay granted, 112 Ohio St. 3d 1418, 2006 Ohio 6712, 859 N.E.2d 557, 2006 Ohio LEXIS 3622 (2006); motion granted, 112 Ohio St. 3d 1430, 2007 Ohio 107, 860 N.E.2d 109, 2007 Ohio LEXIS 26 (2007); affirmed, *In re Crim. Sentencing Cases*, 116 Ohio St. 3d 31, 2007 Ohio 5551, 2007 Ohio LEXIS 2567 (2007); post-conviction relief denied, *State v Silverman*, 2007 Ohio 6498, 2007 Ohio App. LEXIS 5750 (OH App., 10 Dist. 2007); discretionary appeal not allowed, 117 Ohio St. 3d 1459, 2008 Ohio 1635, 884 N.E.2d 68, 2008 Ohio LEXIS 980 (2008); writ of *habeas corpus* dismissed, *Silverman v Lazaroff*, 2009 U.S. Dist. LEXIS 74819 (S.D. Ohio, Aug. 19, 2009) 2006 Ohio App. LEXIS 3791:

Admission of testimony from two lay witnesses to defendant's signature was not error since they were "limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of his testimony or the determination of a fact in issue."

Ray Fraley, who had been chief document examiner for Columbus Police Department, testified as defendant's handwriting expert. However, the judge discounted his testimony because he had examined photocopies and not originals. The assignment of error of inadequate assistance of counsel that Fraley did not have originals available was overruled since defendant, an attorney, was representing himself at that time and should have seen to it that Fraley had originals.

2007 Ohio App. LEXIS 5750:

The same issue of inadequate assistance of counsel was raised in post-conviction review regarding Fraley's not having originals to examine. The same fact of defendant's representation of himself at the time Fraley testified was basis for denial of relief.

COMMENTARY: The handwriting expert is often at the affect of one's own client since most often one can only examine what is supplied by the client. The report in 2006 Ohio App. LEXIS 3791 indicates that Fraley did admirably well with the limited material. I believe the judge should have considered Fraley's opinion and the objective observations he could compile given what he had to work with. Since banks routinely destroy originals, it might also have been the best available evidence, a possibility defendant, as his own representative at trial, should have ascertained and argued the point if it were so.

We are all victims of the profit-enhancing practices of banks in destroying vital evidence when they know so often these documents are either the subject of litigation or exemplars needed to resolve facts in dispute. Given their focus on their profits versus service to us, at least they should offer us the option of paying to have our financial documents sent to us for our safekeeping. But then maybe they also realize such evidence would often prove their negligence and bad acts.

2008

1252. *Calame, et al., v Treece, et al.*, 2008 Ohio 4997 (OH App. 9 Dist. 2008)

“{¶¶22} Louise Calame testified that she believed that Blanche had signed her 1989 trust and quit-claim deed and that the sole reason that Blanche’s signature looked slightly odd on the documents was because Blanche was ‘shaky’ when she signed them. Yet, Michael Robertson, an expert document examiner, testified that the 1989 documents contained ‘key variations’ in the writing, which indicated that Blanche had never signed them. Robertson explained that he compared Blanche’s alleged signature on the 1989 documents with multiple examples of her known signature. Robertson acknowledged that a person’s handwriting often deteriorates with the onset of sickness and age, but opined that these factors had no bearing in this instance because someone else had signed Blanche’s name on the 1989 documents. Thus, Robertson’s expert testimony directly conflicted with Louise’s assertion that Blanche had signed the 1989 quit-claim deed and the 1989 trust; the same document that named Louise as successor trustee.”

COMMENTARY: The documents gave the deceased mother’s estate to one brother, so the disinherited siblings brought the action. The court’s finding was forgery as well as undue influence. There may be something missing in the summary of the expert’s testimony, because as it stands there seems to be the logic of the vicious circle: Due to variations, someone else wrote Blanche’s signature. Blanche’s signature could have varied due to poor health, but someone else wrote the signature. Therefore poor health was not a factor. Since poor health does not explain the variations, someone else must have written Blanche’s signature.

1253. *Knowlton v Schultz, et al.*, 179 Ohio App. 3d 497, 2008 Ohio 5984, 902 N.E.2d 548, 2008 Ohio App. LEXIS 5044 (OH App. 1 Dist. 2008); discretionary appeal not allowed, 121 Ohio St. 3d 1441, 2009 Ohio 1638, 903 N.E.2d 1224, 2009 Ohio LEXIS 945 (Ohio 2009)

At [*28]: “In their eighth assignment of error, the children contend that the trial court erred in failing to strike the testimony of the estate’s handwriting expert, Mary Kelly. They argue that she used ‘known samples’ provided for her by the defense to compare to the signature on the will instead of using independently verified ‘known signatures.’ This assignment of error is not well taken.”

At [*30]: “Kelly, an undisputed expert with many years’ experience, testified fully about her methods. She stated that she had compared the disputed signatures with ‘known

signatures,’ which was the standard procedure for verifying signatures. She had obtained the documents that contained the ‘known signatures’ from a paralegal at the Taft firm who was familiar with the case and with Knowlton’s signature. Kelly examined numerous authenticated documents and stated that it was acceptable to assume the authenticity of the known documents.

“Our review of the record shows that Kelly’s methods were sufficiently reliable to meet the admissibility threshold. Any weakness in her methods went to her testimony’s weight and credibility, not to its admissibility. Therefore, the trial court did not err in admitting her testimony into evidence, and we overrule the children’s eighth assignment of error.”

COMMENTARY: The challenge about “known signatures” presented to Ms. Kelly is common, although it comes in different formulas. The cross-examiner knows very good and well that is how he supplies his handwriting expert with exemplars, if he ever uses one. In the way she answered Ms. Kelly showed familiarity with the applicable rule, and this is a good example to all of us.

1254. *State v Hughley*, appeal from *State ex rel. Hughley v Cuyahoga Cty. C.P. Court*, 2008 Ohio 5882, 2008 Ohio App. LEXIS 4923 (OH App. 8 Dist. 2008); 2008 Ohio 6146, 2008 Ohio App. LEXIS 5132 (OH App. 8 Dist. 2008); motion denied, 120 Ohio St. 3d 1503, 2009 Ohio 361, 900 N.E.2d 621, 2009 Ohio LEXIS 351 (2009); writ of *habeas corpus* denied, *Hughley v S.C.I./Warden Saunders*, 2009 Ohio 1294, 2009 Ohio App. LEXIS 1103 (OH App. Fairfield County 2009); writ of *mandamus* denied, *State ex rel. Hughley v McMonagle*, 2009 Ohio 1259, 2009 Ohio App. LEXIS 1070 (OH App. 8 Dist. 2009); discretionary appeal not allowed, motion denied as moot, *State v Hughley*, 121 Ohio St. 3d 1439, 2009 Ohio 1638, 903 N.E.2d 1223, 2009 Ohio LEXIS 978 (2009); writ of *habeas corpus* denied, *Hughley v Marc Saunders Southeastern Corr. Inst.*, 2009 Ohio App. LEXIS 4166 (OH App. Fairfield County 2009); application for reopening denied, 2009 Ohio 3274, 2009 Ohio App. LEXIS 2778 (OH App. 8 Dist. 2009); *State v Hughley*, 122 Ohio St. 3d 1501, 2009 Ohio 4233, 912 N.E.2d 106, 2009 Ohio LEXIS 2384 (2009); discretionary appeal not allowed, 122 Ohio St. 3d 1524, 2009 Ohio 4776, 913 N.E.2d 459, 2009 Ohio LEXIS 2533 (2009); appeal after remand, 2009 Ohio 5824, 2009 Ohio App. LEXIS 4911 (OH App. 8 Dist. 2009); objection overruled by, motion granted by, writ of *mandamus* denied, *Ohio ex rel. Hughley v Ohio Dep’t of Rehab. & Corr.*, 2009 Ohio 6276, 2009 Ohio App. LEXIS 5260 (OH App. Franklin County 2009); writ of *mandamus* denied, *State ex rel. Hughley v McMonagle*, 2009 Ohio 4543, 2009 Ohio App. LEXIS 3856 (OH App. 8 Dist. 2009)

2008 Ohio App. LEXIS 5132:

In three separate trials, defendant was given these convictions:

Case number 462014: Seven counts of forgery, six counts of uttering and four counts of tampering with records.

Case number 473878: One count each of forgery and uttering.

Case number 481899: One count of a title offense involving a motor vehicle.

The three cases at trial were combined in one case upon appeal. In his fifth assignment of error defendant asserted that the trial court should have provided him with a handwriting expert. However, he refused to provide various exemplars and he had been photographed making the transaction in question. He did succeed in having one felony conviction reduced to a misdemeanor.

COMMENTARY: In 2008 Ohio App. LEXIS 5132 no handwriting expert testimony at trial is indicated, but presumably there was upon the forgery convictions. However, one wonders whether the man has continued his career in forgery, having defeated most of the accusations against him and costing the tax payers of Ohio large sums for both his prosecution and defense, as well as for his multiple appeals. See *State v Hughley*, 2004 Ohio 132, 2004 Ohio App. LEXIS 122 (OH App. 8 Dist. 2004) for a prior prosecution. Did he have other prosecutions that were not appealed?

1255. *State v Sands*, 2008 Ohio 6981 (Ct. App. Ohio, 11 Dist. 2008)

COMMENTARY: There was testimony by Detective Doyle as to the writer of two notes.

2009

1256. *In re Guardianship of the Pers. & Estate of DiCillo*, 2007 Ohio 1785, 2007 Ohio App. LEXIS 1617 (Ohio Ct. App., Geauga County, Apr. 13, 2007); affirmed, *Reeves v Vitt, Executor of the Estate of Betty Jean DiCillo, et al.*, 2009 Ohio 2436; 2009 Ohio App. LEXIS 2051 (OH App. 11 Dist. 2009)

At [*9]: “Three handwriting experts offered their opinions. Dr. Philip Bouffard, a forensic document examiner, testified for Mrs. Reeves regarding the authenticity of the signature on the will. He compared Mrs. DiCillo’s alleged signature on the will, the mortgage deed, and the note, to her known signatures in six photocopied documents.” He testified to differences, explaining which he considered significant and evidence of falsity and which were not significant.

At [*11]: “Another expert, Harold Rodin, also a forensic document examiner, testified for Ms. Amato. He examined over twenty documents containing Ms. DiCillo’s known signatures, some of them original documents.” He concluded to falsity as did Bouffard. The report gives detailed observations and reasoning by both Bouffard and Rodin.

“Hans Gidion, also a forensic document examiner, testified as an expert for Mr. Vitt. He examined the same known signatures as Mr. Rodin. Comparing these signatures to the alleged signature on the will, he concluded to a reasonable degree of professional certainty that Mrs. DiCillo ‘had the ability to have [*13] written the question signature.’ When asked about the lack of the lead-in stroke in the capital letter ‘B’ in ‘Betty’ on the will, he stated that he could not imagine someone who forged another’s signature would omit something so important in the very first stroke of the initial letter. To him, the omission of this important

feature raised a ‘red flag’ and led him to believe the signature was actually penned by Mrs. DiCillo *herself*. He also characterized the differences in the letter ‘J’ in ‘Jean’ and ‘D’ in ‘DiCillo,’ as well as other differences pointed out by Dr. Bouffard and Mr. Rodin, as mere ‘variations.’ He stated that Mrs. DiCillo was ‘capable of a great range of variation’ in her handwriting.”

The Court of Appeal concluded: “Furthermore, the evidence also shows that on March 19, 2000, the date Mrs. DiCillo and the witnesses allegedly signed the will at her home, she was still recuperating [*19] in the Geauga Regional Hospital’s sub-acute care center. This evidence corroborates the testimony of both the expert witnesses and Mrs. Reeves that the signature on the will was not authentic.

“In explaining the discrepancy between the signature’s lack of authenticity and the testimony of the two witnesses who testified Mrs. DiCillo signed what they believed to be the will, the trial court reasonably deduced that Mr. Vitt staged a will signing ceremony, where Mrs. DiCillo did, in fact, sign some document on that occasion but not the document purported to be the will presented to the probate court.”

COMMENTARY: Mr. Gidion, who is certified by the American Board of Forensic Document Examiners (ABFDE) and the British Forensic Science Society (BFSS), did not say the signature was genuine, only that it possibly was, which was the crux of the dispute. He did use the two greatest excuses for an opinion against the facts that handwriting experts have ever conceived of: The evidence of falsity is evidence of genuineness since a forger would not make such a silly mistake, and all differences are within the writer’s range of variation. However, one must carefully avoid investigating the actual range of variation shown in the available exemplars. One must just eruditely pronounce the entirely speculative assertion with authoritative pomposity.

Document examiners often appeal to ability or range of variation but never show the reality of these by demonstrative evidence from exemplar writings. Somewhere along the line qualified trainers neglect inculcating into students that an explanation is reasonable only if it is based on demonstrable and verifiable observations, if these observations are interpreted by theories that are well established, and if a clear, complete and logical presentation is offered. Merely saying “range of variation” offers an excuse not an explanation. If ability to do something were any proof of having done it, we are all guilty of murder.

Bouffard is ASQDE, AAFS, ABFDE.

1257. *Nicula v Nicula, et al.*, 2009 Ohio 2114, 2009 Ohio App. LEXIS 1773 (OH App 8 Dist. 2009)

“Plaintiff introduced exhibit 1, a ‘Special Proxy,’ purportedly giving an individual named Camelia Damian power of attorney to transfer the property to Virgil, which would pass to his sons, including [*4] Narcis, after Virgil’s death. Plaintiff testified that he does not know Camelia Damian and never authorized anyone to sell the property on his behalf. He also denied signing the document. The evidence further indicated that the ‘Special Proxy’

was notarized by defendant Lou Ann Nicula, defendant Narcis' wife. Defendant Lou Ann had been an employee of plaintiff's former attorney, had access to plaintiff's signature, and admitted at trial to frequently and improperly notarizing blank documents or documents after they had already been signed.

"Plaintiff further testified that, as a result of the forged Special Proxy, the property was transferred out of his name and he was compelled to travel to Romania to hire attorneys there to clear the title of the fraudulent transfer. He incurred costs of approximately \$ 7,000.

"Plaintiff also presented testimony from handwriting expert Nancy Maxim. According to Maxim, the upper extenders of the signature on the Special Proxy has a blob of ink at the top of the strokes which is indicative that the strokes were not made in a single fluid movement. The signature on the Special Proxy also has loops whereas plaintiff's known signature is more angular. According [*5] to Maxim, and to a reasonable degree of professional certainty, the signature on the Special Proxy was not plaintiff's."

COMMENTARY: I reproduce the long passage to give an idea of the complexity of the case. Plaintiff earlier had to file and win a law suit in Romania on the same issues.

1258. *R.C. Olmstead, Inc. v GBS Corp., et al.*, 2009 Ohio 6808, 2009 Ohio App. LEXIS 5700 (Oh App. 7 Dist. 2009)

"RCO's handwriting expert testified that she did not believe the signature had been traced or drawn (simulated) by someone other than Mihalich, whom she opined had signed the non-compete agreement. (Tr. 1986-1987). RCO notes that the defense's handwriting expert testified that the signature had not been forged by the owner of RCO, the executive vice president or the other employees of RCO. (Tr. 2768). However, this handwriting expert testified that the signature on the non-compete agreement had been traced or simulated by someone and had not been signed by Mihalich himself. (Tr. 2715, 2724-2727, 2740-2743, 2749-2750). He pointed to hesitation marks, improper overlap and suspicious initiation strokes. It was also pointed out to be suspicious that RCO did not produce the alleged [*28] May 28, 2002 agreement until November 23, 2005, over a year after filing suit and nearly two years after Mihalich left."

COMMENTARY: Presumably the two experts presented exhibits illustrating why one thought there was no tracing and one thought there was. This would be the only way for us to verify which is correct. Rarely do case reports include illustrative exhibits.

1259. *State v Cicerchi*; appeal from *State v Quick*, 2009 Ohio 2124, 2009 Ohio App. LEXIS 1778 (Ohio Ct. App., Cuyahoga County, May 7, 2009); affirmed in part, reversed in part, remanded, 182 Ohio App. 3d 753, 2009 Ohio 2249, 915 N.E.2d 350, 2009 Ohio App. LEXIS 1923 (OH App. 8 Dist. 2009); discretionary appeal not allowed, 2009 Ohio 4776, 122 Ohio St. 3d 1523, 2009 Ohio 4776, 913 N.E.2d 458, 2009 Ohio LEXIS 2589 (Ohio, Sept. 16, 2009)

Defendant's conviction arose out of a scam defrauding homeowners facing foreclosure. They were told that by signing title over to someone with good credit, they

could rent their house back and regain title when they were financially able. They never regained title and lost any equity and fees they had paid.

COMMENTARY: In this case a handwriting expert testified that the signatures on the purchase agreement allegedly by the buyer and the original owner were most likely forged.

1260. *State v Howard*, 2009 Ohio 2663, 2009 Ohio App. LEXIS 2309 (OH App. 10 Dist. 2009); motion granted by, 123 Ohio St. 3d 1405, 2009 Ohio 5031, 914 N.E.2d 203, 2009 Ohio LEXIS 2803 (2009); discretionary appeal not allowed, 2010 Ohio 188, 2010 Ohio LEXIS 79 (Ohio, Jan. 27, 2010)

Defendant reported that he had found his wife, Delilah, dead and hanging from a nail in the basement, a belt from a robe tied around her neck and to the nail. He appeared unemotional when telling Delilah's mother and his daughter of the death. Afterwards he could not identify which nail it was.

"Law enforcement collected four undated suicide notes. Each note was separately addressed to appellant and their three children. Appellee's [State's] handwriting expert concluded that Delilah 'probably' wrote the notes. (Vol. II Tr. 186-87.)"

COMMENTARY: Likewise, a handwriting expert for the defendant concluded that Delilah wrote the suicide notes. On other evidence Defendant was convicted of murder, and the conviction was affirmed.

1261. *State v Quick*, 2009 Ohio 2124, 2009 Ohio App. LEXIS 1778 (OH App. 2009)

COMMENTARY: A handwriting expert testified to false signatures on purchase agreements.

1262. *State v Adam Saleh*, 2009 Ohio 1542, 2009 Ohio App. LEXIS 1407 (OH App. 2009)

"Jeanette Brown, an FBI document examiner, testified that the handwriting on the notes to Weatherspoon and Damron matched appellant's handwriting. Brown testified that she compiled Exhibit D-2, which showed that appellant 'prepared comparable portions' of the letter to Mardis. The name 'Adam' is on the [*16] authorship line."

COMMENTARY: One suspects the court has summarized Brown's testimony a bit too much. That appellant "prepared comparable portions" of the letter literally could mean either that he did not prepare the other portions or that his preparing of the comparable portions proved he prepared the entire letter. I assume the latter was meant.

2010

1263. *State v Anderson*, 2010 Ohio 1663 (OH Ct. App. 8 Dist. 2010)

Defendant's convictions were affirmed, including one of forgery, the victim of which was her brother Michael Boyd.

"{¶ 7} Boyd admitted at trial that the signatures on the back of the check did not look

like his sister's handwriting. An expert called at trial stated that it was inconclusive whether Anderson's signatures on the back of the checks were written by her because he only had copies of the checks, not the originals; also, disguised handwriting is difficult to compare with natural handwriting. He testified that he was unable to perform a comparison of Boyd's forged signature because it was not legible. He could not reach a conclusion as to whether Vance endorsed the checks because of the quality of the documents submitted for comparison.”

Then later:

“{¶ 16} While the handwriting expert could not determine definitely whether the signature was Anderson's, he also stated that he could not definitely exclude the signature as hers. Moreover, the fact that the checks were deposited into Anderson's account indicates that Anderson knew of the theft and could have had someone else endorse the checks on her behalf.”

COMMENTARY: “Oh, what a tangled web we weave, when first we practice to deceive!” Did Sir Walter Scott forget or sidestepped saying whether the spider or the fly became caught by the web?

2011

1264. *Lucero v Ohio Dept. of Rehab. & Corr.*, 2010 Ohio 5907 (OH Court of Claims 2010); affirmed, 2011 Ohio 6388 (OH Ct. App. 10 App. Dist. 2011)

Plaintiff, a prison inmate, sued in the Court of Claims for injuries suffered in an attack by another inmate. Part of his evidence that defendants had had notification of the impending attack was a kite claimed to have been signed by its recipient, a prison official who denied the signature was his. Plaintiff called Ray Fraley, formerly document examiner with Columbus Police Department, to testify to the authenticity of the signature on the kite in question. Only a copy of the kite was available, a fact that seems to have been part of the reason the court found for defendants.

The judgment in favor of defendants was affirmed by the Court of Appeals which gives this more extensive version of Fraley's testimony:

“{¶¶6} To verify the validity of Christman's signature on the kite, appellant presented expert testimony from Ray Fraley, a retired question document examiner for the Columbus Division of Police. Fraley compared the signature on the photocopied kite with several exemplars of Christman's actual signature. He found ten points of similarity between the example signatures and the signature contained on the kite, leading him to conclude that the signature on Plaintiff's Exhibit 1 belonged to Christman. Fraley could not, however, discount the possibility that Christman's signature was copied and pasted onto the kite. Fraley acknowledged that technology allows forgers to copy a signature onto a document as if the signature appeared as if it were part of the document. On redirect-examination, Fraley testified that there was no evidence that Christman's signature had been forged; however, on recross-examination, he admitted that such evidence may be difficult to detect. (Tr. Vol. II,

62.)”

COMMENTARY: Some interesting technical points are raised by ¶¶6. First, finding ten or even a 100 points of comparison does not permit a reliable conclusion of validity until one demonstrates there are absolutely no unexplained significant differences. This burden is usually handled by the almost offhand assertion there are no significant differences, no matter how different or how significant they may be. I assume Fraley performed a complete job of it absent indication to the contrary. Second, the possibility that Christman’s signature could have been copied and pasted onto the kite is evidence of nothing in and of itself. If possibilities were evidence of realities, then, as stated elsewhere herein, we have all already been proven to be serial killers. Third, though lack of evidence of forgery is not proof there is no forgery, it certainly proves there is no reasonable support to conclude that there is a forgery. Generally, I suspect this kind of alleged evidential proof is adopted solely in support of the fact-finder’s favored fact to be found. Fourth, difficulty of some fact’s detection is not evidence of its undetected presence. On redirect the expert should be asked what methods are used to detect such things, did the expert employ such methods, and what were the factual results. Then the pay-off question: Based on your factual findings, was or was not Christman’s signature copied and pasted onto the kite? I would also suggest investigating the availability of equipment to perform such operations in the prison in question.

2012

1265. *Moran v Radtke*, 2012 Ohio 1379 (OH App. 10th Dist. 2012)

Prior to trial Moran’s handwriting expert said writing on envelopes containing defamatory statements was disguised and so the writer could not be identified. At trial, Radtke presented a handwriting expert who said Radtke did not write the envelopes. Moran’s expert was permitted to give rebuttal evidence against the bases for that opinion but not to go on and identify Radtke as the writer. This ruling was not error because the excluded testimony would have gone beyond rebuttal and into what properly belonged in Moran’s case in chief.

COMMENTARY: I suspect much evidence is saved for rebuttal in order to blindside the opponent with it.

1266. *State v Hess*, 2012 Ohio 4516 (OH App. 2012)

“{¶¶ 13} Jessica Toms, a forensic scientist at BCI, testified that she had analyzed the handwriting on the checks using the known handwriting samples collected from Hess and Puffenberger. (Id. at 180, 186). Toms testified that she was able to identify Hess as the drafter of all three checks, with the exception of the signature on one of the checks. (Id. at 187-188). Hess testified that she was unable to identify the maker of the signature on that check because it was unnaturally written, ‘I can’t tell whether it’s a tracing, whether the pen was bad, whether it’s an attempt to copy somebody’s handwriting.’ (Id. at 188).”

COMMENTARY: To tell whether the pen or writing surface “was bad” should not have been beyond an expert’s ability.

1267. *State v Kerr*, 2012 Ohio 3360 (OH App. 8 Dist. 2012)

“{¶¶28} In the instant case, the record supports the trial court’s qualification of Jessica Toms as a handwriting expert because she clearly had specialized knowledge, skill, experience, training, and education that assisted the jury in understanding the evidence.

“{¶¶29} Kerr argues that Toms testified that ‘no conclusion’ could be drawn regarding the author of Carnegie’s signatures on the checks admitted as evidence, as well as on the documents. Kerr argues that Toms exceeded the proper testimony when she added her own opinion to explain her conclusion. The State argues that offering her opinion is exactly what Toms was asked to do in her testimony and did not exceed her expertise in doing so. ‘The trial court has broad discretion in the admission of evidence, and unless it has clearly abused its discretion and the defendant has been materially prejudiced thereby, an appellate court should not disturb the decision of a trial court.’ *State v. Joseph*, 73 Ohio St.3d 450, 460, 653 N.E.2d 285 (1995), citing *State v. Maurer*, 15 Ohio St.3d 239, 473 N.E.2d 768 (1984), paragraph seven of the syllabus. Furthermore, Kerr has failed to cite any authority to support his argument that Toms exceeded her expertise other than his making a conclusory statement, contrary to App.R. 16(A)(7).

“{¶¶30} Regardless, Kerr has failed to show how he was prejudiced by Toms’s testimony.”

COMMENTARY: Passages like this are interesting in that it was found that the expert’s testimony did not prejudice the defendant. Ordinarily we might think that, if it had had no effect prejudicial to the defendant, it would not have been offered. However, it seems only to mean whether the trial judge, who hears the case, and the appeal justices, who review it, think that the prejudice is legally outside the permissible limits of the rules of evidence, either in itself or as weighed against other factors. I wonder whether two masters of the law of evidence could independently give reasonably close explanations of what are semantic perplexities to us lay people.

1268. *State v Ward-Douglas*, 2012-Ohio-4023 (Ct. App. OH 2012)

It was not ineffective assistance of counsel either in how state’s document examiner, Julia Bowling, was cross-examined or not to call a defense examiner. Also, use of defense eyewitness expert was not ineffective assistance of counsel.

COMMENTARY: Bowling stated that defendant had disguised her exemplar writings but was still identified as having written some illegal prescription forms. The eye witness expert offered what seem to be very common sense methods for photo line-ups.

1269. *State v Widmer*, 2012 Ohio 4342 (OH Ct. App. 12 Dist. 2012)

Defendant was convicted of murdering his wife. I found description of the investigation more fascinating, and hopefully far more faithful to reality, than TV’s various

CSI shows. Details of the investigation are followed by the story how it played out at trial and upon appeal. I found the lengthy case report more interesting than most. The document examiner testified on the prosecution's motion to quash defense subpoena for production of employment records of a prosecution employee-witness. The entire description of examination and testimony is this:

“{¶ 126} [Richard] Shipp, a forensic document examiner who was retained to do a handwriting comparison and analysis, testified that he had compared the June 25, 1996 application to ‘known documents’ containing Braley’s handwriting. These known documents included: a sheet of paper from 2010 that Braley had written and printed his name on numerous times, a 2005 Loveland income tax return signed by Braley; a sofa express invoice signed by Braley; Braley’s W-4’s from 2000 and 2004; performance reviews from 2005 and 2007 signed by Braley; and an April 2002 employment verification request signed by Braley. Shipp testified that although he was able to do a comparison with the June 25, 1996 application, he was not satisfied with the quantity and quality of the ‘known documents’ that he had for comparison with the application because the ‘known documents’ did not have like words and letter combinations. Nonetheless, Shipp was able to reach the ‘probable opinion that [Braley] signed [the application].’ However, Shipp’s opinion was inconclusive as to whether Braley printed the information contained within the application. He stated, ‘I wasn’t satisfied with enough agreement or differences to identify or eliminate [Braley] as the printer of that document and that’s why I say I’m inconclusive.’”

The subpoena was quashed for a number of reasons.

COMMENTARY: As soon as a handwriting expert is stumped because of lack of exact same letters, words, combinations of same, or style of writing, you know the expert is permanently stumped by lack of mastery of the human graphic motor sequence. It seems this means that many, if not the majority, of them are permanently stumped but are unaware of it. I suspect this inadequacy comes from the fallacy that a two-year training followed by a two-year apprenticeship is the only way to learn document examination. One is in danger of knowing only what one knows that there is to be known and thus concluding that one already knows all that is worth knowing. There are several scientific, technical and artistic disciplines concerned with handwriting, each with a body of professional literature that in scientific and technical treatment might surpass that portion of the literature of document examination that treats of handwriting. The latter is nothing to be sneezed at, to resurrect another cliché from my childhood.

2013

1270. *State v Knapp*, 2013-Ohio-870 (OH App. 11 Dist. 2013)

Knapp’s convictions for vehicular homicide, not stopping after an accident and driving under the influence were confirmed. Knapp presented both an expert who testified that the testing of her blood alcohol was based on flawed data and other experts who said even if sober she could not have avoided hitting the pedestrian given the nature of the road,

nighttime conditions and the unexpected appearance of a pedestrian on that road. A document examiner testified to the effect of alcohol on handwriting:

“{¶19} Katherine V. Schoenberger, a forensic document examiner, submitted an opinion regarding the effect of alcohol and handwriting. At trial, the State noted the contrasting legibility of Knapp's handwriting when she first arrived at BW3, and two hours after she had consumed the Christmas Ale. Schoenberger opined that ‘[s]ignatures are not reliable in determining the level of intoxication due to the smaller amount of writing [sample],’ and that ‘[r]esearch has * * * shown that the intoxication level and the deterioration of handwriting do not always correlate.’”

COMMENTARY: The statements about research on alcohol and handwriting illustrate the difference between the truth and the whole truth. To obtain the fullest picture possible, the expert need only enquire about the individual's customary use of alcohol and, where possible, obtain exemplars written cold sober, tipsy and inebriated. As an example of some of the fine points to be considered, an alcoholic who drinks when in withdrawal will initially have improved handwriting, while a habitually cold sober person will show immediate, though slight, impairment with the very first imbibing. By consulting one of us who has studied the relevant and substantial literature in depth, a cross-examiner could reduce the credibility of an expert giving the testimony indicated in *Knapp* and possibly thoroughly impeach the expert.

1271. *State v Vore*, 2013-Ohio-1490 (OH Ct. App. 12 Dist. 2013); *habeas corpus* action dismissed with prejudice, *Vore v Warden*, Case No. 1:13-cv-800 (U.S. DC S.D. OH 2014)

“{¶ 24} Vore next argues that his counsel was ineffective for failing to object to the state's introduction of evidence that defense counsel's own handwriting expert concluded that Vore wrote the robbery demand note. However, there was no reason that the expert's opinion should not have been admitted. Moreover, defense's expert opinion was the same as the state's expert witness, and therefore was cumulative to other evidence and testimony before the jury regarding Vore's handwriting analysis.”

COMMENTARY: My understanding is that it is incompetent for a defense attorney to let evidence developed as attorney work product come to the attention of opposing counsel. So maybe incompetent assistance is not always ineffective assistance, especially where it only adds unneeded fuel to the fire.

My suggestion, if the rules the attorney works under permit it, is to designate every forensic expert as a confidential consultant until noticed otherwise. Attorneys in California do that regularly. If they forget to make it explicit at the start, I will enquire if such is the case.

Though in *Vore v Warden*, Vore was on his own, the decision sounds much the same as in 100 or more cases where appellate attorneys were involved. Therefor, I submit the following thoughts for consideration, since a motion brought in federal district court is to my mind essentially an appeal from the state court's decision.

In *Vore v Warden*, the testimony of defense handwriting expert, Kramer, is said to

have been cumulative at the original trial. I suspect that, in some cases where this principle is used to find no error or at least no harmful error, it is like the proverbial last straw that broke the camel's back. If the accumulation of allegedly merely repetitive evidence had not been envisioned by the prosecution as essential to a conviction, it would not have been bothered with. Having gotten at trial the little extra needed to break the back of the defense's camel, the prosecution argues on appeal it was of no weight whatsoever to either the camel or the jury's finding that made final disposal of the camel.

Do appeal attorneys ever use the contentions by the prosecution at trial to support the same contention by the defense upon appeal, namely, the evidence complained of was essential for the conviction? At times I have the nagging suspicion that appeal attorneys simply perform by rote without the burden of studying the actual case or interviewing participants in the original trial. I know the several times I have offered to assist *pro bono* with an appeal I have not even been told to get lost. It is far kinder to tell a volunteer to go to hell than simply ignore both the offer and the existence of the volunteer. After all, any expert at the original trial might possibly know some tiny little something of one's own expertise that exceeds the knowledge and understanding of appellate counsel regarding the same expertise.

2014

1272. *State v Cross*, 2014-Ohio-5605 (OH Ct. App. 4 Dist. 2014)

“{¶ 14} William Bennett also testified during the State's case in chief. Bennett, a retired Columbus Police Department detective, was qualified as an expert in handwriting analysis. Bennett testified that in his opinion, Cross was the author of all the abovementioned [anonymous] letters and envelopes, with the exception of one envelope, which he thought it was ‘highly probable’ that Cross authored the envelope.”

COMMENTARY: Cross was convicted of intimidation as a third degree felony and sentenced to 400 hours of community service and a \$10,000 fine. Bennett is mentioned five times in the case report. The following are the other substantive statements made of his testimony:

First, anonymous letters to other people were admitted into evidence, not to prove character, “but rather to prove other purposes, such as motive, identity, plan, and scheme,” so Bennett’s testimony that Cross authored them was proper.

Second, “{¶ 27} The letters were also relevant to the analysis conducted by Bennett...in determining the identity of the perpetrator. [They]...provided Bennett a larger sample size for comparison with the known writings of Cross, allowing Bennett to affirmatively conclude that Cross was the author of the letters.... Moreover, the evidence was relevant to refute Cross’s testimony that he did not author the letter at issue and that he did not have a grudge with the Hamiltons or other recipients.”

Third, the jury was “in the best position” to find Bennett’s testimony more credible than Cross’ own testimony that he had not written the anonymous letters. Bennett’s

testimony had been “unequivocal” that Cross wrote the anonymous letters, saying that for only one envelope it was “highly probable” that Cross had written it.

Fourth, the summary description of Bennett’s methodology is superior to most such descriptions in the case law and suggests he did much else of similarly admirable mastery:

“{¶ 15} Bennett also explained how he was able to reach his ultimate opinion. First, Bennett was able to procure numerous handwriting exemplars from Cross. The exemplars, also referred to as known writings, contained both printed and cursive handwriting samples. Some of the exemplars were dictated, meaning Cross was requested to write a certain passage. Others were non-dictated, meaning they were known past writings of Cross. Bennett then compared the exemplars with all of the letters described above. Bennett noted several factors that supported his opinion that Cross wrote the letters. For instance, Bennett testified that the known writings and the letters, or the questioned writings, contained similar formations of ‘a’s’, ‘g’s’, ‘i’s’, ‘j’s’, ‘m’s’, ‘n’s’, ‘o’s’, ‘r’s’, ‘s’s’, ‘t’s’, ‘v’s’, and ‘y’s’. This was important, according to Bennett, because Cross had a very unique way of writing those letters. Bennett also noted that Cross was not always consistent in the way he wrote certain letters, and that the questioned writings were also not consistent. Bennett testified that inconsistency in writing among an individual [sic] is itself, unique. Bennett also noted that the slant, ratio (sizing of letters), spacing (between letters and words), base (straightness), and line quality was comparable between the known and questioned writings.”

Finally, he was not certified by any professional organization nor had attended seminars recently, modestly describing what most likely were the Secret Service and FBI survey courses as seminars.

1273. *State v Velez*, 2014-Ohio-4269 (Ct. App. OH 9 Dist. 2014)

“{¶ 15} Lieutenant Detective Carpentiere thereafter sought handwriting samples from Mr. Velez's workplace and also got a search warrant to search Mr. Velez's home to verify Mr. Fetter's description of it and to look for handwriting samples. Additionally, Lieutenant Detective Carpentiere had Mr. Velez come in to complete documents for the purpose of comparing the handwriting on the documents to that on the receipt/invoice (State's Exhibit D). Lieutenant Detective Carpentiere described Mr. Velez as ‘laboring’ and ‘struggling’ over the completion of the writing samples. While the prosecution hired a handwriting expert to give an expert opinion as to whether the receipt/invoice was written by Mr. Velez, the expert was not permitted to give her opinion at trial due to the trial court determination that the expert report did not comply with Crim.R. 16(K).”

Ohio Crim.R. 16(K) reads: “Expert Witnesses; Reports. An expert witness for either side shall prepare a written report summarizing the expert witness’s testimony, findings, analysis, conclusions, or opinion, and shall include a summary of the expert’s qualifications. The written report and summary of qualifications shall be subject to disclosure under this rule no later than twenty-one days prior to trial, which period may be modified by the court for good cause shown, which does not prejudice any other party. Failure to disclose the written report to opposing counsel shall preclude the expert’s testimony at trial.”

COMMENTARY: I like the rule quoted. Much unfairness and game-playing by the prosecution, and less so by the defense, but still a fact, would be eliminated. I would like to see an improvement to the rule: a financial sanction for any attorney, party or witness violating the rule. In addition to such financial sanction, a wilful violation should cause the violator to repay reasonable costs incurred by the opposing party directly caused by the violation of the rule.

Falsifying exemplars is always an unwise maneuver, seemingly always by those who think they are the most clever of wise guys. Even if defendant were innocent, any falsification of evidence could persuade the fact finder to convict. In a civil case I was document examiner for defendant doctor in a medical malpractice case. The attorney and I agreed that, with my report and deposition and opposing expert's deposition, defendant doctor had a very strong case. Then he fabricated referral notes on forms that were designed and published after the dates he put on them. Defense attorney had no choice but to settle lest severe sanctions be imposed at trial or the jury return with a cost commensurate with their just indignation at being deceived.

2015

1274. *Sonis v Rasner*, 2015-Ohio-3028 (Ct. App. OH 8 Dist. 2015)

Rasner appealed the trial court's decision not to let her present her handwriting expert, Curt Baggett, because of discovery violation in disclosing him only three days before trial, well beyond the time schedule set by the court. She said she could not obtain an expert and expert report any sooner, but the court said she had had ample time to do so and even failed to disclose him as soon as she obtained his report.

COMMENTARY: Since nothing is revealed of the expert himself or of his work product, nothing assured can be said of either. Still, another, and maybe completely unrelated, issue is brought to mind which might be applicable to another case and so offer a line of enquiry. Suppose someone in Rasner's position had spent the entire time interviewing handwriting experts but only found one with an acceptable opinion at the last moment. Ought there be a rule that any party or attorney reasonably suspected of shopping for an expert opinion be required to disclose all experts contacted or interviewed? I believe there should be a rule that parties routinely disclose the identities of all experts whom they have interviewed whether as confidential consultants or not. This might well curb two undesirable practices: shopping for a testifying expert who alone will agree with the paying customer and taking the local and/or best talent out of the pool of experts available to the other side.

1275. *State v Proby*, 2015 Ohio 3364 (OH Ct. App. 10 Dist. 2015)

William T. Bennett testified as a handwriting expert for the state. He used what seems to be a *sui generis* set of terms for expressing his opinion. Just before testifying he told the prosecutor he had changed his opinion, which came as a surprise to defense counsel

who first heard it during testimony. Although this violated the written rules, case law made Defendant/Appellant prove prejudice. At {¶ 14} “Bennett acknowledged that handwriting analysis is not ‘an exact science’; rather, it is ‘opinionated.’” One needs to read the case report to savor all the nuances of the less than standard foray into forensics in a retirement after a 39-year career as a police document examiner.

COMMENTARY: The report is full of such things as Bennett’s saying Proby wrote the middle initial and last name of the allegedly forged signature, but he could not say whether he wrote the first name since he would have to compare cursive to print. He did say Proby was capable of having written the first name. So comparing print to cursive lets one determine ability to forge but not the actuality for forging. He gave the same opinion in *State v Mollohan*, No. 99 CA 42 (OH Ct. App. 4 Dist. 2000): “Mr. Bennett examined the writings and, in a letter of opinion, concluded that it was ‘very unlikely’ that Jessica wrote the note whereas her mother was ‘very capable’ of performing that function.” The witness saying such a witless thing is also quite capable of almost any crime the defendant is accused of, an argument I hope to read as having been made by some defense attorney.

Defense counsel did not seek expert assistance since he planned to depend on a less than “positive” identification by Bennett. This is where a knowledgeable consulting examiner, fully conversant with the applicable literature and standards, would have been effective. Bennett was vulnerable on many fronts, for example:

- a) His terminology was at odds with the one that most authorities and courts of law have recognized;
- b) The document bearing the disputed signature was notarized, but there is no indication the notary testified while Bennett said the notary did sign; and
- c) Bennett’s perplexity as expressed in several places suggests very poor observational skills.

2016

1276. *Christ Holdings, LLC v Schleappi, et al.*, 2016 Ohio 4664 (Ct. App. OH 7 Dist. 2016)
COMMENTARY: Testimony of a handwriting expert was received.

1277. *State v Blevins*, 2016 Ohio 5049 (OH Ct. of App. 2 Dist. 2016)

Defendant was convicted of forging more than 1,000 checks over a ten-year period to steal 1.5 million dollars from her employer.

COMMENTARY: It seems the sole basis for appeal was that the opinion of state’s document examiner, Rebecca Barrett, was not entirely definite in all respects and regarding every forged check. Given the appeal court’s full reasoning on the matter, the thoughts offered here probably would have made no difference. However, a defense attorney might find virtue in them in a different set of circumstances.

The various permutations of the standard terminology for expressing opinions by document examiners have the glaring omission of one scientific essential, namely there

being no set of objective criteria specific to each term in the scale of nine from definite identification to definite elimination of a suspect. Yet I do not recall one case in this compilation where the expert witness was required to state the precise set of criteria guiding the selection of the term used to state the opinion nor of what was the scientific or technical basis for its justification. The original publication of the scale was 36 *Journal of Forensic Sciences*, pages 311-9, "Standardization of handwriting opinion terminology," (Letter to editor), by Thomas V. McAlexander, Jan Beck, and Ronald M. Dick.

It had at least a set of subjective criteria that, unfortunately, could not be intelligently assessed for objective evaluation. At page 317: "We are justified in identifying writing when the evidence is so strong that we are completely convinced that the suspect wrote the questioned writing, regardless of whether or not we may be able to convince others who do not have our experience and expertise in this field. That should have no bearing whatever on our opinion." The versions from SWGDOC and ASTM, and I assume eventually from NIST since the same folk ultimately control things, do not have even such amorphous criteria.

Though the letter to the editor is the most thoroughly thought-out presentation of the terminology and is masterfully written with the most complete coverage of all issues involved, it is retrogressive from the very positive and objective view of the expertise in some older case reports such as *Greenstreet v Greenstreet*, 65 Ida. 36, 139 P.2d 239 (1943).

At page 241 *Greenstreet* states that, if a mark used as a signature is too small to contain sufficient characteristics for identification, it goes to the weight, not admissibility, of expert testimony on same. The Court said that the expert can detect and demonstrate to the trier of fact a peculiarity which is hard to see at first but easy after expert testimony. Without an individualizing peculiarity a signature by mark is not subject to expert identification.

At page 243 the Court notes the value of enlarged photos in showing peculiarities of exemplar signatures by a mark. "The opinion of a handwriting expert is obviously no better than his reasons therefor. The bases of his reasons are, of course, the questioned document and exemplars, which are as open to inspection by the trier of fact as the expert. There is thus a check upon his opinion or conclusions which is not available as to many other expert witnesses, which is an added reason why such testimony should be admissible under a liberal interpretation of the rules of evidence and on the theory that the trier of fact is entitled to all information possible."

From all this we can satisfactorily conclude handwriting expert opinions, at least in Idaho back in 1943, were based on objective, physical facts the expert witness could, and should, demonstrate to the fact finder. Have experts since gotten sadly, or conveniently, less knowledgeable or competent?

1278. *State v Ward*, 2016 Ohio 7627 (OH Ct. App. 2nd Dist. 2016)

COMMENTARY: Testimony of handwriting expert Jessica Toms was received.

3. Ohio Supreme Court.

1994

1279. *State v Loza*, 71 OH St3 61, 641 N.E.2 1082 (OH 1994)

Court of Appeals had affirmed conviction and death sentence for four counts of aggravated murder, as did the Supreme Court. Court's syllabus states in part: "(10) admission of expert testimony that defendant wrote inculpatory letters was not plain error; (11) seizure, copying, and admission of letters from jail did not violate defendant's First or Fourth Amendment rights...." Defendant had been observed loading trash into someone else's dumpster. Incriminating evidence was recovered, leading to Loza's arrest. At trial Stephen Greene gave expert testimony identifying Loza as writer of letters admitting culpability for the murders. At page 1101: "Because the defense did not object to this testimony at trial, reversal requires a finding of plain error." There was none. Greene was qualified. "Additionally, 'It is a well settled rule in this state * * * [that handwriting comparisons] * * * may be made * * * by persons skilled in handwriting, such as are usually called experts.' *Bell v Brewster* (1887), 44 Ohio St. 690, 696, 10 N.E. 679, 683."

COMMENTARY: Ohio is thus another state not just refusing to reinvent the wheel but also refusing to deny its existence.

2001

1280. *In re Election Contest of December 14, 1999 Special Election for the Office of Mayor of the City of Willoughby Hills*, 91 Ohio St. 3d 302, 2001 Ohio 45, 744 N.E.2d 745, 2001 Ohio LEXIS 1002 (OH 2001)

COMMENTARY: Evidence from a document and handwriting expert was received.

2006

1281. *State v Jackson*, 100 Ohio St. 3d 1514, 2003 Ohio 6460, 800 N.E.2d 33, 2003 Ohio LEXIS 3283 (Court of Common Pleas for Trumbull County 2003); affirmed, 107 Ohio St. 3d 300, 2006 Ohio 1, 839 N.E.2d 362, 2006 Ohio LEXIS 1 (Ohio 2006); post-conviction relief denied, 2006 Ohio 1007, 2006 Ohio App. LEXIS 919 (Ohio Ct. App., Trumbull County, 2006); *certiorari* denied, *Jackson v Ohio*, 126 S. Ct. 2359, 165 L. Ed. 2d 285, 2006 U.S. LEXIS 4408 (U.S., 2006).

2006 Ohio LEXIS 1:

"Jackson next asserts ineffective assistance in defense counsel's failure to object to admission of letters allegedly written by Roberts to Jackson without requiring authentication of her writings as a predicate to admission. In contrast, Jackson points out, his letters to Roberts were admitted only after authentication of his [*43] authorship was established by testimony of a handwriting expert.

“Detective Monroe did properly identify the letters pursuant to *Evid.R. 901(A)*. Roberts told Monroe that she had written the letters. They were found in the trunk of Roberts’s car in a bag with Jackson’s name on it. They were signed ‘Donna Marie.’ They had a return address of a post office box registered to Roberts. Counsel were not ineffective in failing to object to the admission of Roberts’s letters to Jackson, for they were properly authenticated, and defense counsel used them as part of their trial strategy to bolster Jackson’s claim of self-defense.”

COMMENTARY: The report describes use of some ways to authenticate writings other than by expert testimony.

2009

1282. *Ohio State Bar Association v Trivers*, 123 Ohio St. 3d 436, 2009 Ohio 5285, 917 N.E.2d 261, 2009 Ohio LEXIS 2829 (OH 2009)

COMMENTARY: A handwriting expert testified in disciplinary action wherein an attorney was suspended for one year.

2011

1283. *Disciplinary Counsel v Karris*, 129 Ohio St. 3d 499, 2011-Ohio-4243 (Ohio 2011)

COMMENTARY: Rebecca Barrett, a forensic document examiner for the Ohio Bureau of Criminal Identification and Investigation, testified in a disbarment hearing.

2016

1284. *Kolosai v Azem*, 2016 Ohio 394 (OH Ct. App. 8 Dist. 2016)

Of the dual complexity from the factual and legal aspects of the case, we will focus on lessons for our own practical conduct based on Plaintiff’s losing efforts. Defendants renewed a motion for stay and to compel arbitration by arguing signatures agreeing to arbitration were valid though Plaintiff denied it.

“{¶9} On remand, Walton Manor filed a renewed motion to stay arbitration on December 12, 2014. Attached to the motion were copies of documents, the majority of which were not a part of the record, from the files of Nicholas and Rose containing their signatures. Also attached was a document dated December 4, 2014, on Speckin Forensic Laboratories letterhead, and signed by Robert D. Kullman (‘Kullman’), Forensic Document Analyst.[2] Kullman opined that, based on his review of machine copies of documents known to contain the signatures of Nicholas and Rose, (1) the signatures on the machine copies of Nicholas’s admission and arbitration agreements were probably written by the same person, to a reasonable degree of scientific certainty; and (2) the signatures on those agreements, compared with documents containing Rose’s signature, were, to a reasonable degree of scientific certainty, not written by the same person.”

Footnote [2] reads: “The document also states that a Curriculum Vitae with Kullman's last four years of testimony is attached, but it is not a part of the court filing.”

COMMENTARY: First lesson is that an expert witness should include all required and useful documentation and statements that will have the affidavit pass muster on first view. The failure of Kullman to do so caused unnecessary time and work for all. I think the granting of the motion for stay and to compel should have been granted with sanction for causing all the unnecessary bother a properly submitted affidavit would have precluded. This view has absolutely no basis in any decision I have ever seen, just my ingrained training from childhood that we all should make an honest effort to avoid sloppiness and neglect in our work as much as humanly possible.

Second lesson comes from the major reasons given for denying Plaintiff's contentions, something we have seen often enough in other cases. If we need time to do something necessary in a case, we should both ask the court directly to grant the time and state the reasons why. Third lesson is closely related to the second, namely, we should state at first opportunity our arguments why the opposition's arguments or requests do not merit consideration and do so at full length though not boringly and repetitively extended. Fourth, we should do our due diligence and seek out all reasonable assistance to make our position soundly founded in law and fact. Mainly that means skimping on needed expert assistance is tantamount to surrender to the opponents, just as a country's neglect of national defense is prior surrender to any enemy deciding to attack in the future.

I will end this with a quote to use when the other side attacks your expert witness as being unreliable because of being paid by you, as if they were not paying their own attorney and expert witnesses. Additionally it suggests an expert's prior difficulty with rejection by a court needs specific tie-in to the instant case to be a valid challenge. Paragraph 39 ends with this:

“Kolosai argues that the court abused its discretion by allowing the expert to testify on grounds that the expert had been found "unreliable" in a Michigan court case. See *Berry v. V.*, 2012 Mich. App. LEXIS 2487, 2012 WL 6178157 (Mich.Ct.App. Dec. 11, 2012). It is unclear how the Michigan court reached that conclusion — it claimed that the expert's opinions were not credible because he had been paid to testify. That is an unremarkable proposition — one typically pays for an expert's expertise. In any event, the estate makes no *specific* argument as to why the expert was not credible in this case.” [Emphasis added.]

II. OKLAHOMA CASES.

1. *Oklahoma trial courts.*

2005

1285. *Legacy Vision, LLC, v Gary Yeamans*, W.D. OK June 6, 2005

COMMENTARY: Cited by Robert J. Muehlberger in his 2006 AAFS presentation as ruling that handwriting expert could testify to similarities or differences but not offer an opinion.

2. *Oklahoma Court of Criminal Appeals.*

1992

1286. *Stiles v State*, 1992 OK CR 23, 829 P2 984 (OK Court of Cr App 1992)

Appellant claimed error because he could not cross-examine a bail bondsman and handwriting expert on their pending criminal cases, but such was irrelevant since both were giving objective evidence. At page 994: “The testimony of the handwriting expert also was objective evidence. He compared appellant’s known handwriting sample.... By graphic display before the jury, comparisons were made of the characteristics of each handwriting sample.... Because of the objective nature of the testimony of each of these witnesses, evidence of outstanding criminal charges against them was irrelevant.”

COMMENTARY: Another modern court recognizes the objective nature of correct expert handwriting evidence. The very objectivity of the testimony as described supports its scientific reliability.

1287. *Jones v State*, 917 P. 2d 976 (OK Ct. Cr. App. 1995)

At page 979: “Furthermore, a review of the record demonstrates surprise occurred.... Second, defense counsel was surprised by the testimony of Mike Hull, the forensic document examiner. Hull was asked to conduct handwriting comparisons on November 2, just four days before trial. Although defense counsel may have been aware that the analysis was going to take place, the record clearly demonstrates defense counsel had not been advised of the results, nor had he had time to prepare for Hull’s testimony.”

Footnote 2 states: “In addition to their late endorsement, Mike Hull and Vida Boyett were not included on the State’s list of 83 witnesses which was provided pursuant to Art. 2, §§ 20 of the Oklahoma Constitution.”

COMMENTARY: The case report set forth one of the more flagrant trials by surprise one will come across. I believe that not only should the courts of appeal give relief of reverse and remand, but there should be a personal financial sanction for prosecutors who practice such tactics. Only a personal cost for gross misconduct will eradicate it from those

whose professional ethics are of no deterring efficacy.

1995

1288. *Omalza v State*, 911 P. 2d 286 (OK Ct. Crim. App. 1995)

In footnote 26: “Floyd also directs our attention to testimony by J. Michael Hull, a forensic document examiner with the Oklahoma City Police Department. Hull testified that State’s Exhibits Nos. 67 and 68, a notebook attributed to Jones and a known sample of Jones’ handwriting, respectively, were both written by Jones. Contained in the notebook was a notation that Jones would no longer sell drugs to the victim, Kim Grant. No contemporaneous objection was raised to this testimony, therefore the testimony is considered properly admitted.”

COMMENTARY: If the author of *Ecclesiastes* had been an attorney, he would have added: “There is a time to object and make motions, and there is a later time to wish you had.”

2007

1289. *Wood v State*, 2007 OK CR 17, 158 P.3d 467, 2007 Okla. Crim. App. LEXIS 17 (OK Crim. App. 2007)

COMMENTARY: A handwriting expert testified at the evidentiary hearing.

2014

1290. *Pavatt v State*, 159 P.3d 272, 2007 OK CR 19 (OK Ct. Crim. App. 2007); *habeas corpus* relief denied, *Pavatt v Trammell*, Case No. CIV-08-470-R (U.S. DC W.D. OK 2014)

In a dual prosecution, Pavatt and his lover were convicted of murdering her divorced husband, Rob Andrew. At page 278:

“¶ 12 At trial, the State also presented a letter purportedly from Appellant to one of the Andrew children, written after Appellant had been arrested. In the letter, Appellant claimed to have enlisted the help of another man to kill Rob Andrew, but claimed that Brenda had nothing to do with the plan. The State presented expert testimony that the handwriting of the letter was consistent in a number of respects with known exemplars of Appellant’s handwriting.”

There was also the issue of two letters confessing to the murder of Rob Andrew purportedly from a man waiting trial for murder in an unconnected case. There is extended discussion of that man’s right to refuse to testify lest anything he might say be used against him. Further, there is extended discussion of whether the two letters might be admissible since the purported witness to them was no longer available due to his right not to testify. Pros and cons on both sides of the issue are given. The letters were deemed by the trial court to be unreliable anyway. The appeal decision is of interest for the reasoning why this was

not error.

COMMENTARY: Related but non-expert document issues serve as a bonus for the interested reader. The word “consistent” only means two things can coexist or are not contradictory or exclusive of each other. A questioned writing that is entirely consistent with a suspect’s having written it may yet be entirely consistent with the same suspect not having written it. In other words, “consistent” may be consistent with asserting that there is nothing either to state a reasonable possibility either way or to eliminate either possibility.

3. Oklahoma Supreme Court.

1998

1291. *Lindley v Lindley*, 961 P.2d 202 (OK 1998)

Mother signed a life-estate deed in favor of her youngest son. The attorney who drew it up kept a copy in his files. The two older brothers later persuaded mother to put her interest in the house into a family trust of which they were co-trustees. Upon her death, the surviving co-trustees obtained a copy of the life-estate deed from the county clerk. The younger brother had filed it only after mother’s death. A handwriting expert said that mother’s signature had been traced over so that it was better than she could have written it. The trial court found forgery.

However, the elder brother had not had his expert examine the copy in the attorney’s files, while legally the life-estate was effectuated upon delivery of it to the younger son, recording it having no bearing on its authenticity. The trial court was reversed and the decision of the Court of Civil Appeals affirming the trial court was vacated.

COMMENTARY: Neglect to pursue any reasonable source of evidence is always a way to beg that a loss be bestowed in place of a win. Apparently, the original no longer existed so that the attorney’s file copy was the best evidence available and so should have been examined.

1292. *State ex Relations Oklahoma Bar Association v Spadafora*, 960 P. 2d 365, 1998 OK 40 (OK 1998)

COMMENTARY: In a disbarment action a document examiner testified that, after a document had been certified filed, a handwritten entry was altered, probably by Spadafora.

2004

1293. *State ex Relations Oklahoma Bar Association v Dobbs*, 94 P. 3d 31, 2004 OK 46 (OK 2004)

COMMENTARY: A document examiner testified that a client’s signature Dobbs was accused of forging was written by the client. Dobbs was still suspended from practicing law for two years and a day.

JJ. OREGON CASES.

1. Oregon Courts of Appeal.

2008

1294. *State v Dubois*, 221 Ore. App. 644; 191 P.3d 670; 2008 Ore. App. LEXIS 1132 (OR App. 2008)

COMMENTARY: Handwriting expert identified defendant's signature on release of automobile although she denied it after having admitted it.

KK. PENNSYLVANIA CASES.

1. Pennsylvania trial courts.

1994

1295. *In re Nomination Petition of Charles Cooper, as a Candidate for the Democratic Nomination for Senator in the General Assembly from the Second District, Appeal of Harvey M. RICE, Petitioner*. 163 Pa. Commonwealth Ct. 430; 643 A.2d 717 (Common. Ct. PA 1994)

COMMENTARY: The testimony of handwriting expert William J. Ries was received.

1996

1296. *In re Anonymous*, No. 61 DB 95, 35 Pa. D. & C. 4th 9 (PA Ct. Common Pleas 1996)

At page 13: "(21) A written report from [I], certified forensic document examiner, [J], was admitted into evidence and considered with full force and effect as though [I] had testified at the hearing to the facts and conclusions set forth in the report."

The findings were that two clients had not signed a release agreeing to a settlement and that the attorney had signed for them, which they said was without their knowledge or consent.

COMMENTARY: The case report also states that the expert was fully qualified. In this compilation I have considered that the admission in trial of an expert's report, affidavit or declaration in lieu of testimony, as if the expert had so testified or would so testify, was equivalent of an actual testimony in person.

2001

1297. *In Re: Nomination Petition of Victor R. Delle Donne*, 779 A.2d 1; 2001 Pa. Commw. LEXIS 355 (PA Commw. 2001)

COMMENTARY: Donne's name was ordered not to appear on the ballot for judge since enough signatures on his petition were invalid for one reason or another. One signature was struck on the testimony of Michelle Dresbold, objector's handwriting expert.

2003

1298. *Nebesho v Brown and Milos*, 2004 Pa.Super. 83, 846 A.2d 721, 2004 Pa. Super. LEXIS 308 (Superior Ct PA 2003)

In reviewing a complex equity action the Superior Court summarily states at [*23]: "Under difficult circumstances, the Chancellor fashioned relief in as an equitable a manner as could be devised." The central issue of fact was whether Nebesho's signature on a deed, which conveyed her half interest in their family home to her first husband Brown, was forged as she claimed. At [*13-*14]: "Brown next argues that the court erroneously concluded that Nebesho established by clear and convincing evidence that the transfer of the property was a fraudulent transfer. He relies on his own self-serving statement that Nebesho appeared at the notary's office and executed the deed, as well as, the statement by the notary public 'that she would not have notarized a document unless both subscribers appeared before her and presented photo identification.' Brown's brief at 11. He further relies on the testimony of his handwriting expert, Curtis Baggett, who opined that Nebesho's signature on the deed was in fact Nebesho's. He disregards the fact that the Chancellor found that Nebesho's handwriting expert, John S. Gencavage, was 'more credible and persuasive' and that his testimony was corroborated by testimony other than 'the self-serving testimony of Brown, which ...we did not find credible.' C.O. at 7.

"Although Brown acknowledges that witnesses' credibility and the weight to be given their testimony is for the fact-finder to decide, he focuses on the Chancellor's failure to announce that Nebesho met her burden of proof by clear and convincing evidence. However, he cites no authority requiring the Chancellor to enunciate such a statement and we conclude that a failure to make this statement is not error."

COMMENTARY: There is no question that expert handwriting evidence is admissible as reliable. Curtis Baggett is the same person who is in the case *Brown v State*, 1999 Tex. App. LEXIS 805, discussed infra, and cases discussed earlier where he was disqualified, such as *Wheeler v Olympia Sports Center, Inc.*, U.S. District Court, District of Maine, Docket No. 03-265-P-H. October 12, 2004.

2006

1299. *In Re: The Nomination Papers of Monica A. Treichel as Candidate for State Representative in the 149th Legislative District; Joseph I. Breidenstein, Petitioner*; 898 A.2d 650 (PA Commonwealth Ct 2006)

“The parties presented a joint stipulation, indicating that 140 signatures were uncontested and that 419 signatures were challenged. (Ex. P-3.) Objector then presented *652 the expert testimony of William Ries, a forensic document examiner, in support of Objector’s signature challenges. Based on the evidence presented, this court makes the following determinations.”

COMMENTARY: The Objector was a Republican candidate already on the ballot who wanted to keep Treichel off the ballot, but the effort failed. However, the case report suggests the judge relied on Ries’ opinions.

2007

1300. *Estate of Charles W. Graham*, Control No. 075547 (Court of Common Pleas of Philadelphia, Orphans' Court Division 2007)

J. Wright Leonard testified for contestant that decedent’s signature on an original Designation of Beneficiary Form was false, while Carolyn Kurtz testified for proponent that the signature was genuine. The Administrator explains the applicable legal rule for burden of proof and why he favored Ms. Leonard’s opinion.

COMMENTARY: The reported observations and reasoning of the two witnesses makes instructive reading. I think Ms. Kurtz’s theory invites a thoroughly impeaching enquiry based on the authorities and on the relevant professional literature. Ms. Leonard is board certified by NADE and has served in a number of capacities.

2008

1301. *In re Dennis Morrison-Wesley*, 946 A. 2d 789 (PA Commonwealth Court 2008)

COMMENTARY: In a challenge to a nomination petition, objector presented testimony by a document examiner who said addresses of different persons were written by the same person.

2014

1302. *Hilltop Summit Condominium Association v Hope*, No. 4 C.D. 2014 (Common. Ct. PA 2014)

Hope appealed the decision from a bench trial which was upheld. He had to pay for the inspection of work he had done without permission or approval of the Association and to pay for any corrective work required. The sole reference to handwriting expertise is the

statement: “Trial resumed on May 23, 2012, when Hope presented his own testimony and that of Carolyn Kurtz, a forensic document examiner.”

COMMENTARY: Kurtz is a member of Scientific Association of Forensic Examiners which was founded in 2013.

2015

1303. *Commonwealth v Dennerlein*, No. 2065 WDA 2014 (Super. Ct. PA 2015)

In an appeal from Post-Conviction Relief Act court, the trial court is affirmed.

“Trooper Robert Negherborn, a forensic document examiner with the Pennsylvania State Police Crime Laboratory, recovered from the face of the subsequent check in the [V]ictim's checkbook the impression of the writing depicting the text of the previous check payable to [Appellant], including the authorizing signature. [Trooper Negherborn] was further provided with handwriting samples of the [V]ictim and [Appellant]. Although not issuing a conclusive opinion, Trooper Negherborn testified that in comparing the writing on the check with the samples of the handwriting of the [V]ictim and [Appellant], there was a strong probability that the signature on the check was not that of the [V]ictim. He further opined that there were no significant similarities to indicate that the [V]ictim or [Appellant] wrote the entries on the check, or that [Appellant] wrote the signature on the check.”

COMMENTARY: The entire passage on the document examination is copied since it shows acceptability of handwriting opinions based on an imaging of indented writing which is more difficult than from a photocopy. This is due in great part to Negherborn's conservative statement of opinion which shows a judicious and objective view of the evidence he developed. Further, he did the technically correct thing of asserting elimination of two potential writers but not an identification which would have been technically infeasible.

1304. *In re Estate of Sacchetti*, 2015 PA Super 240 (PA Superior Ct. 2015)

“At the hearing, Charles presented J. Wright Leonard, a forensic document/handwriting examiner who was board certified by the federal, state, and local courts.”

“The orphans' court also specifically credited the testimony of Ms. Leonard and concluded that Mario's signature on the three checks negotiated by Ms. Yau were forged.”

COMMENTARY: Leonard has served in various official positions of NADE. Courts do not board certify; rather each court either does or does not qualify an expert witness to testify in a particular case.

2. Pennsylvania Courts of Appeal.

2001

1305. *In Re: Estate of Orlando Presutti, Deceased; Appeal Of: Olga Ostanski Zarko*, 2001 PA Super 264, 783 A.2d 803, 2001 Pa. Super. LEXIS 2627 (PA Super. 2001)

Sandy Stevens testified as handwriting expert for contestants of will. She was found qualified and her opinion credible. She found more than 70 discrepancies between the signature on the disputed will and decedent's exemplar signatures, and she believed that appellant wrote the signature. Findings of the trial court were affirmed.

COMMENTARY: Ms. Stevens claimed to have been certified by National Bureau of Document Examiners. However, that entity never issued certifications.

On occasion I find that Dr. Risinger expresses my views better than I do, and this is one such. I quote the end of his brief discussion of this case which he opens with a quote from 783 A.2d 803, at 807 (Pa. Super. 2001):

“The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to special knowledge on the subject under investigation. If he does, he may testify.”

“It seems that the ‘any reasonable pretension test’ may capture the general attitude of most courts toward prosecution-proffered expertise in criminal cases more than those same courts are willing to admit quite so bluntly.”

2004

1306. *IN RE Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004*; 865 A.2d 8 (2004); affirmed, 588 Pa. 450, 905 A.2d 450, 2006 Pa. LEXIS 1546 (PA 2006); certiorari denied, *Nader v Serody*, 127 S.Ct. 995, 166 L. ED. 2d 712, 2007 U.S. LEXIS 123 (U.S. 2007)

NOTE: Duplication occurred in discussion of this case. See year 2006 under PA Supreme Court.

A panel of twelve judges conducted a line-by-line review of nomination petitions for Nader and Camejo for President and Vice President. Of 25,697 signatures reviewed, 18,818 were valid, and nearly two-thirds of the signatures were struck. “[T]his signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the [Appellants] through their representatives (not their attorneys) shocks the conscience of the Court.”

The assessment of costs of \$81,102.19 against Appellants was upheld. \$38,267.00 of this amount was for handwriting expert witnesses.

COMMENTARY: There have been many cases through the years where handwriting experts have contributed to the frustration of fraudulent petitions for election to public

office. For example, see *Hamburg v State*. There are a number of reported cases in the Commonwealth courts that name some document examiners who testified in different hearings on nomination papers around the state: Renee Martin, J. Wright Leonard, William J. Kelly, Edward J. Kelly, and Michelle Dresbold. Ms. Martin was one of the founders of NADE, and Ms. Leonard is a board certified member.

2005

1307. *Rothrock v Rothrock Motor Sales*, 53 Pa. D. & C.4th 411, 2001 Pa. Dist. & Cnty. Dec. LEXIS 258 (2001); 2002 PA Super 303, 810 A.2d 114, 2002 Pa. Super. LEXIS 2722, 19 I.E.R. Cas. (BNA) 214 (PA Super. 2002); appeal granted, 574 Pa. 704, 833 A.2d 138, 2003 Pa. LEXIS 1804 (2003); affirmed, 2005 Pa. LEXIS 2154 (Pa., Sept. 28, 2005)

COMMENTARY: Plaintiff was fired by defendant who introduced two warning slips purportedly signed by plaintiff. The slips were to prove cause for the firing. A handwriting expert testified plaintiff's signature was forged. This evidence was properly admitted since it showed defendant had fabricated evidence.

2006

1308. *De Lage Landen Financial Services, Inc., v The Urban Partnership, LLC*, 2006 PA Super 169, 903 A.2d 586, 2006 Pa. Super. LEXIS 1607 (Super. Ct. PA 2006)

Footnote 5 in part reads: "We note that we have found no legal requirement that a party alleging forgery must present a handwriting expert to support his claim. Indeed, our Supreme Court has held that fact-finders are free to disregard a handwriting expert's testimony, if they find contrary evidence from other laypeople to be more credible. *In re Estate of Cline*, 433 Pa. 543, 252 A.2d 657 (Pa. 1969); *Porter's Estate*, 341 Pa. 476, 19 A.2d 731 (Pa. 1941)."

On the other hand, Appellant De Lage Landen's failure to consult a handwriting expert did not help its position on appeal:

"¶ 19 Appellant argues that it cannot be faulted for failing to produce evidence that it does not have. We agree with this proposition in the abstract; however, Appellant did not take advantage of various means of obtaining the information it needed. After a halfhearted discovery attempt, Appellant had no evidence to counter the Olsen affidavit. Appellant then gambled on an argument that the Olsen affidavit was insufficient to carry TUP's burden of proof. As noted above, TUP's evidence was clearly sufficient. We see no abuse of discretion in the trial court's handling of this discovery matter. Appellant's second claim fails."

COMMENTARY: I include this case as a sample of a number of cases where decisions in part are based on the supposition that handwriting expertise is not just admissible but can be effective as determinative evidence.

2007

1309. *Capital Academy Charter School v Harrisburg School District and Harrisburg School District Board of Control*, 934 A.2d 189, 2007 Pa. Commw. LEXIS 579 (Common. Ct. 2007)

Capital Academy presented a petition to appeal denial of its charter school status. The District contended enough signatures were invalid or illegible to make the number of signatures less than required. At trial, J. Wright Leonard testified that 215 lines were partially or entirely in the same hand and that 111 were illegible. The trial court disagreed, conducted its own line-by-line examination, and struck only five as illegible and 39 as being in the same hand. The trial court thus found there were sufficient signatures on the petition.

COMMENTARY: Ms. Leonard is a certified member of NADE.

1310. *Martin Schafer, Jr., deceased/Judy Schafer, Petitioner v Worker's Compensation Appeal Board, et al., Respondents*, 935 A.2d 890, 2007 Pa. Commonw. LEXIS 609 (Commonw. Ct. of PA 2007)

Workers' Compensation Judge [WJC] found for Respondents that decedent had signed an affidavit not to be an employee for purposes of the Workers' Compensation Act. Robert J. Phillips was Claimant's handwriting expert and opined that decedent's purported signature "was very likely executed by Claimant," while Respondents' handwriting expert, John S. Gencavage, opined decedent had signed the affidavit. "The WJC is the ultimate fact finder and may accept or reject the testimony of any witness in whole or in part...and will not be disturbed on appeal."

COMMENTARY: Expert evidence was by reports but considered as if presented live. It is included as representative of the many cases otherwise omitted. Additionally, it is one of the few case reports I have found that involve family similarity in handwriting. Claimant was decedent's widow who brought action for benefits as his widow.

2008

1311. *In re Nomination in re Tony Payton*, 945 A.2d 281, 2008 Pa. Commw. LEXIS 130 (2008 PA Commw. 2008); affirmed, 945 A.2d 162, 2008 Pa. LEXIS 505 (PA 2008)

COMMENTARY: The court relied on the testimony of Michelle Dresbold.

2009

1312. *In Re: Estate of Marjorie J. Cruciani. Appeal Of: Jeannine M. McCullough*, 2009 PA Super 228, 986 A.2d 853, 2009 Pa. Super. LEXIS 4476 (PA Super. 2009)

At [*4]: "Lastly, with regard to the testimony of a handwriting expert, we have held that where the testimony is corroborated by probative facts and circumstances surrounding the will such may overcome the testimony of the subscribing witnesses. *In re Kirkander*,

326 Pa. Super. 380, 474 A.2d 290, 293 (Pa. Super. 1984)”

At [*7]: “The last witness to testify for petitioner was Edward J. Kelly, whose qualifications as an expert were stipulated to by Appellant. Mr. Kelly described the methodology utilized in examining the December 15, 2005, document as ‘image-enhanced comparative analysis’ (simple magnification), which consisted of reviewing photocopies of six checks containing decedent’s signature. These known signatures were compared with the signature on the document dated December 15, 2005. The expert testified that the differences between the check signature and will signature were ‘profound.’ N.T., 9/30/08, at 120. As a result, he opined, within a reasonable degree of forensic scientific professional certainty, that decedent’s signature on the December 15, 2005, document was ‘a forgery[.]’”

COMMENTARY: The terminology attributed to the handwriting expert is idiosyncratic, a term beloved of some experts. One wonders the awesome phrase to describe a complicated magnification if a simple one is “image-enhanced comparative analysis.” Given use of only half of the minimum of 12 exemplars some authors suggest and that then they were copies, the opinion should inspire a close investigation of the observations and theory it stands on. The brief description of the expert testimony does suggest that of an expert in phraseology. Could we say “terminology-enhanced testimonial assertions”?

2011

1313. *Commonwealth of Pennsylvania v Orie*, 2011 PA Super 190 (PA Superior Court 2011)

On the next to last day of the trial defense offered exculpatory documents. After a recess, the Commonwealth presented the testimony of document examiner George Papadopolous “that Jamie Pavlot’s signature on both Exhibits 101-B and 110 had been cut from other documents and pasted on. He specifically concluded that the signature on Exhibit 110 was lifted from Exhibit 101-A. Defense counsel declined the opportunity to cross-examine the expert.” The Superior Court viewed this fraud on the trial court seriously, denying the defendant’s motion to overrule the trial court’s ruling of a mistrial and order for a retrial, but ordering the retrial to proceed.

COMMENTARY: Reading the scathing assessment of the deliberate placing of falsified documents into evidence, one would wish that every such attempt would be met with like sternness from all other courts of law.

The defendant in this appeal is Jane C. Orie. In the 2014 appeal discussed later, defendant is her sister, Janine Mary Orie. There is no indication that a third sister, Joan Orie Melvin, was involved in the activities that gave rise to the prosecution.

2013

1314. *Commonwealth v Hawkins*, No. 1448 WDA 2012 (Super. Ct. PA 2013)

“Pennsylvania State Police Corporal Sandra Miller, who was qualified as an expert in

forensic document examination, testified that the "kites" allegedly sent through Allegheny County Jail inmates to Mr. Glozzer were written by the defendant. She also testified that the letter received by Mr. Sheetz was likely written by the defendant."

COMMENTARY: In jail a "kite" is a handwritten note in very small writing, usually on strips of paper less than two inches wide. On the ubiquitous yellow ruled paper there are two or three lines of writing to one factory printed line space. The ones I have seen were in all block capital letters and essentially at a letter impulse level. Since so many inmates of prisons use all block capitals anyway, reliable exemplars might be easy to hand.

1315. *Commonwealth v Nichols*, No. 1847 WDA 2011 (Super. Ct. PA 2013)

Nichols appealed his conviction for theft and forgery, asserting three errors, two being of the in-the-alternative kind. The first was the constitutionality of the statute making handwriting expert testimony admissible, thus taking consideration of a challenge to its scientific reliability out of the judge's hands. There was no objection on constitutional grounds at trial so the error was waived on appeal. The in-the-alternative errors were the admission of the handwriting expert and the testimony that the opinion was "held to a reasonable degree of scientific certainty." Since there was no objection at trial to either of these asserted errors, both had been waived. A matter cannot be raised for the first time upon appeal.

COMMENTARY: I was told once that, when one is in doubt answering multiple choice questions in a test, pick answer "C" as the best bet. Maybe when doubtful at trial whether to object or not, do so just in case, and repeat the objection every time the same issue is raised. Appeals are uphill battles all the way, and a win on one point seems most often to be offset by a loss on another point that is said to neutralize any harmful effect.

2014

1316. *Estate of: Lauren B. Angstadt. Appeal of: Karl Matter and Kim Karoly Luciano. Estate of: Peter J. Karoly, Deceased. Appeal of: Karl Matter and Kim Karoly Luciano*. Nos. 1355 EDA 2013, 1356 EDA 2013 (Super. Ct. PA 2014)

The wills of a husband and wife, who perished together in a plane crash, were found valid. At trial before Master Garb, whose recommendation was adopted by order of the judge of the Orphan's Court, appellants Matter and Luciano had Gus Lesnevich as their handwriting expert and Albert Lyter as their ink expert. Appellees had J. Wright Leonard as their handwriting expert and Valery Aginsky as their ink expert. (The stress in "Valery" is on the middle syllable.) Little is given of the handwriting testimony, but more of the ink testimony, particularly that of Aginsky who had more expert findings than Lyter did.

COMMENTARY: Leonard is a member of NADE and has served on its Board of Directors in various capacities. Because of the excellence of his publications and his circumspection in expressing opinions, Dr. Valery Aginsky is the only ink expert I will recommend.

Footnote [3] stresses a factor out of several that many ink experts, such as Lyter, routinely do not consider. Attorneys should automatically ask about all such factors that can affect ink test results and so skew the data:

“Dr. Lyter, Appellants' expert, testified:

“[Counsel for Appellees]: Q: Now, the—are you aware of where the wills were found in this case?

“A: No.

* * *

“Q: Dr. Lyter, if ink of a document with an ink signature is contained in, let's say, a metal suitcase and is put out with the sun beating on that suitcase, would you agree with me that such heating in the summer months can advance the drying of the ink?

“A: Yes.

“N.T., 12/15/11, at 63-64.”

Lyter, as holding himself to be an accomplished ink expert, should have enquired as to environmental factors relating to the making, use and storage of the document to ascertain what factors possibly affecting ink, such as heat, chemicals, handling and light, occurred. I believe, absent the ink expert's enquiry into such factors, that laypersons would probably agree these should be routine considerations. I suggest that the absence thereof supports a legal finding that such expert opinion is unreliable as to both scientific and legal criteria. However, avoiding what ought to be technically routine permits more ink experts to render more opposing ink expert opinions and so improve their financial situation, no doubt done in scientific innocence versus avarice.

1317. *Commonwealth v Case*, No. 3225 EDA 2013 (Super. Ct. PA 2014)

An order denying petition for relief pursuant to the Pennsylvania Post-Conviction Relief Act is affirmed. Two men entered an alley to buy drugs, and Case shot them both, one dying at the scene and one dying later. Among other evidence at trial a forensic document examiner identified Case as the writer of an anonymous letter in which the writer admitted to the murders.

COMMENTARY: This is another case of Defendant cleverly doing what he could to assist the prosecutor.

1318. *Commonwealth v Isabella*, No. 485 MDA 2014 (App. PA Superior Court 2014)

“The jury found [Appellant] engaged in a course of conduct mostly consisting of submitting fraudulent written documents that caused numerous magazine subscriptions to be delivered to James and Heather Yurick, among others. The Commonwealth presented eleven witnesses, to include those victimized by [Appellant], all of whom verified they did not order the various, numerous publications but notwithstanding received the magazines and bills due and owing therefore. The victims were compelled to spend countless hours contacting publishers in order to stop the unwanted subscriptions, eliminate the bills, and obtain copies of the order forms to investigate the source therefore.”

“Corporal Mark Gardner of the Pennsylvania State Police was called on behalf of the Commonwealth. He is employed as a Questioned Document Examiner in the Forensic Document Lab.¹⁵ He testified he examined the various questioned documents and the known standards of [Appellant]. Upon completing the handwriting analysis, he testified with the requisite degree of certainty that [Appellant] authored the questioned documents that served to place the magazine orders.”

COMMENTARY: If one is investigating cases where orders for merchandise are alleged to have been placed by means of order forms that were made available in magazines or other locations as web sites, ask to see copies of the original order post cards. Take them to the Post Office since they might be able to provide you with very revealing information. In one case it was proved that the “victim” had to have placed the orders himself in the name of the party he was harassing as evidence they were harassing him. Through the postal indicia the Post Office folk showed how the cards had to have been mailed by the one who received the merchandise.

On appeal Isabella asserted error in admitting photocopies of some of the magazine order forms rather than originals, since "photocopies have a tendency to be distorted, enlarged, et cetera...." Reading the discussion by the Court of Appeals, I suspect the appeal focused on reliability of the copies for handwriting identification while the justices focused on faithfulness of content to the originals. Maybe if the appeal had specified that error was asserted solely on reliability for forensic purposes and set forth the technical reasons why, the assertion of error could have had a better chance. Generic assertions of error seem hardly ever to prevail if at all. It seems to me that assertion of error regarding forensic evidence should set forth:

- a. The precise issue, such as reliability for a handwriting identification;
- b. The specific occurrence of the error, such as use of copies and not originals;
- c. The incorrect factual observations or other expert action as relevant to the issue;
- d. The technical standards applicable to the above;
- e. How these standards were violated or not applied;
- f. The proper alternative(s);
- g. The applicable law and how it supports reversal; and
- h. How the proper alternative(s) would have reasonably led to a different outcome favorable to the Appellant.

I have not come across a handy step-by-step guide for this sort of thing but assume it must be available somewhere and is honored in the neglect far more than in the performance. If one is to lose at trial or on appeal, one should go down creatively with flags flying and guns blazing, versus something like a repetitively worded rejection.

1319. *Commonwealth v Orie*, No. 941 WDA 2013 (PA Superior Ct. 2014)

The case, *Commonwealth v Orie*, discussed above among 2011 cases, involved the same trial as this appeal since the two sisters were co-defendants. After documents introduced as exhibits by the other sister were determined to be forged and thus a fraud on

the court, a mistrial was declared as to both sisters. Counsel for this Defendant objected, wanting the jury to complete deliberations for her. Among other reasons for denying the request was that this Defendant would profit from forged documents she had nothing to do with, and also the trial process itself would have been tainted. On retrial, Defendant was convicted and the conviction upheld on appeal.

COMMENTARY: Defendant in this appeal won at least one point. The judge had orally ordered her to write letters of apology to those she had manipulated in effectuating her crime. This was not included in the written and signed sentence, so it was set aside.

The Defendant in this appeal is Janine Mary Orie. In the previous appeal it is her sister, Jane C. Orie. A third sister, Joan Orie Melvin, does not seem to have been involved in the activities that gave rise to the prosecution.

The moral to this story is that, while we have no choice as to whom we share genes and DNA with, we are free to choose wisely or foolishly as to participating in their good or bad deeds.

1320. *Novak and Wife v Novak*, No. 4095 of 2011 (Ct. Common Pleas Westmoreland County, PA 2013); affirmed, No. 1521 WDA 2013 (Superior Ct. PA 2014)

Son and Daughter-in-law sued Mother for payment on an agreement whereby Son and Wife had assisted Mother to purchase a house. Mother reneged on payments and even denied having signed the agreement. Mother presented testimony of Michelle Dresbold who said Mother's signature on the agreement was forged. It was not error for trial court to accept other evidence over Dresbold's. In fact, the trial court had made no direct and explicit decision on the authenticity of Mother's signature on the agreement, inferring the validity of the agreement from other evidence. The trial court's finding in favor of Son was affirmed.

COMMENTARY: Dresbold said the signature on the Agreement was significantly different from exemplars. She admitted on cross-examination that another genuine signature on a check was significantly different from the exemplars she had used. It seems to be an almost universal practice among handwriting experts to ignore the demands of identification theory which are rooted mostly in good common sense. On voir dire, an opposing handwriting expert must be made to set forth the precise complex of significant traits that prove that every exemplar signature that the expert relied on, and by inference any other genuine signature, is indeed by the suspected writer and no other, at least no other reasonable suspect within the instant case. If the handwriting witness cannot provide that essential basis for offering an expert opinion, the witness has not made an expert finding, though maybe a finding expertly tailored to the wishes of the client.

Once an opposing expert witness has been impeached in the way described, the party calling the expert has the burden to cure the impeachment by developing an expert explanation why a particular exemplar signature has the significant difference developed but is still genuine and an exception without application to the expert fact at issue. A reasonable explanation must have at least these elements, though more may be required by the circumstances of the instant case:

1. The explanation must be based on observable, demonstrable and verifiable physical facts about the signature under examination;
2. These facts must be interpreted by a theory shown to be relevant and valid;
3. The theory must be applied to the physical facts by correct logic; and
4. The entirety of the impeachment be satisfactorily addressed and answered by the explanation or explanations offered.

Here is an alternative way to state the immediately above instruction: If one's handwriting expert witness has been impeached on the above suggested enquiry, on redirect one must enquire about the flip side of that evidential coin. Thus in this case, that witness must be able to provide a reasonable explanation as to why the genuine check signature has significant differences but this does not affect the original opinion. For example, when the check was signed the writer had some acute illness. Son did not present a handwriting expert, but, if he had, his expert would use the same approach by explaining, for example, why the alleged significant differences Dresbold relied on were due to the awkward position Mother was in while signing the Agreement, namely, bent over an open window of a pick-up and signing the document that rested on the passenger seat. In fact, if I had advised Son's attorney on cross-examining Dresbold, that would have been made much of.

1321. *In Re: Nomination Petition of Anna M. Parkinson; Appeal of: Patricia T. Quinn*. No. 487 C.D. 2014; *In Re: Nomination Petition of Patrick Parkinson; Appeal of: Patricia T. Quinn*. No. 488 C.D. 2014 Commonwealth Ct. PA 2014)

Trial court upheld validity of both petitions, which was affirmed upon appeal. "At the hearing, Objector presented the testimony of William J. Ries, a handwriting expert (Expert). Candidate and his wife testified. In addition, Candidate offered sworn affidavits of the electors...." The court credited the evidence by the candidates over the expert's.

COMMENTARY: This case illustrates the intellectual and legal independence of the judge who is not obliged to agree with an expert.

2015

1322. *Commonwealth v Pouliczek*, Nos. 1061 EDA 2014, 1340 EDA 2014 (Super. Ct. PA 2015)

COMMENTARY: Handwriting expert, Officer Kevin Dwyer, identified Appellant Pouliczek as writer of a letter soliciting the murder of a witness against him.

1323. *Robinson v LLEM Corporation and Pinnacle Capital Funding*, No. 422 EDA 2014 (Super. Ct. PA 2015)

There was no error of law in trial court's denying motion *in limine* to preclude handwriting expert, William Ries, from testifying that the deeds in lieu of foreclosure bore Appellant's original signatures.

COMMENTARY: Given the several denials of the signatures the testimony in reply

hardly came as a surprise.

1324. *In Re: Nomination Petition of Stephanie Singer, Candidate for Office of Philadelphia City Commissioner*; No. 514 C.D. 2015 (PA App. Commonwealth Ct. 2015)

Singer presented the report and testimony of J. Wright Leonard. Having first objected to Objectors' handwriting expert, William J. Reis, Singer agreed he could testify. The issue was did Singer have enough valid signatures of electors, and the outcome was she was four shy. It was a detailed and painstaking procedure, and it seems Singer lost mostly on procedural rulings.

COMMENTARY: Singer did not offer all her evidence and replies to Objectors during the course of the hearing. I suspect she or her attorney was cutting corners and not doing the costly and difficult tasks that seemed to be overdoing the proof. What should have been done yesterday, but was not, cannot now supply yesterday's support for today's need.

2016

1325. *Commonwealth v Heleva*, No. 886 EDA 2015 (Super. Ct. PA 2016)

In a pro se appeal from Monroe County Court of Common Pleas, criminal defendant Heleva asserted error in, among other issues, denial of funds for a second handwriting expert to prove he did not sign a waiver. Footnote 6 gives this notation regarding the hearing in Court of Common Pleas: "Heleva hired an expert handwriting witness, Hartford Kittel, who testified at the October 2, 2009, PCRA evidentiary hearing. His examination of the signatures was inconclusive." It was not error to deny funds for a second handwriting expert.

COMMENTARY: One cannot fault Heleva for an inadequate appeal that somewhat ignored what transpired in the lower court, since appeal attorneys seem often to make the same almost self-defeating assertions of error.

1326. *Commonwealth v McCrommon*, Nos. 1749 WDA 2015, 1750 WDA 2015 (PA Super. Ct. 2016)

Handwriting expert, Corporal Robert Negherbon, identified Defendant as writer of letters, the comparison writing having been properly authenticated.

1327. *Commonwealth v Ramsey*, No. 2198 MDA 2015 (PA Super. Ct. 2016)

At the conclusion of the case report is this summary: "After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Richard A. Lewis, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (See 1925(a) Opinion, at 8-15) (finding: (1) opinion of handwriting expert properly admitted where: expert had specialized knowledge beyond that of layperson;

expert's analysis and conclusion were based on reasonable degree of scientific certainty; expert concluded Appellant probably wrote note; expert testified as to factors considered in her determination and her analysis; expert's opinion fell at top of 9-point scale, which is more refined scale used and recommended by those in her profession; and expert's work was peer-reviewed; (2) expert opinion: relevant where it evidenced Appellant's intent when he entered bank and testimony made material fact, i.e., who wrote note, more or less likely, and not so prejudicial as to require exclusion; and (3) verdict not against weight of evidence where: bank employee testified that his identification of Appellant as person who robbed bank was based on 'first hand' experience on date of incident and weight to be afforded to fact that employee had seen email from bank with Appellant's picture was for jury to determine; although expert in fingerprint analysis could not determine age of fingerprint, bank employee's testimony established Appellant exited from bank and touched door where print was retrieved; and, as discussed above, court properly admitted testimony of handwriting expert). Accordingly, we affirm on the basis of the trial court opinion."

COMMENTARY: My guess would be one's only avenue of attack on the court's opinion would be to prove at least one factual assertion to be mistaken.

1328. *Estate of Michael Kiefner. Appeal Of: Hope Kiefner and Diana Wible*, No. 745 WDA 2015 (Super. Ct. PA 2016)

One of the alleged errors by the trial court appealed from was the third finding of fact: "3. Contrary to the testimony of Wendy Carlson, an expert in handwriting analysis, the Decedent's signature on the Will is not a forgery." The trial court was upheld.

COMMENTARY: The trial court did express respect for Ms. Carlson's opinion, though, not having a trained legal mind, I lack ability to perceive the cause for such respect. Among causes for the opposite kind of respect is that she used the 30-year-old exemplars her clients supplied. Maybe the man had begun dying of mesothelioma for more than 30 years previously so that his physical condition had not changed since he wrote the exemplars.

1329. *Estate of Carlton Hoff Stauffer, by and through its Administrator, Hoff Stauffer, v Bielava*, No. 906 MDA 2015 (Super Ct. PA 2016)

"In its final issue, Appellant contends that 'the trial court erred by flatly rejecting on grounds of credibility alone the detailed, unopposed testimony from [its] handwriting expert, hence a new trial is warranted.' ...However, Appellant did not include this issue in its prolix Rule 1925(b) statement.... Therefore, it is waived."

COMMENTARY: And this is an example how one can keep one's own expert evidence from being considered. It is not recommended as a winning strategy.

3. Pennsylvania Supreme Court.

2001

1330. *In Re: Nomination Petition of Mary Flaherty for Office of Judge of the Commonwealth Court v Appeal Of: John A. Hanna*, 564 Pa. 671, 770 A.2d 327, 2001 Pa. LEXIS 956 (PA 2001)

“[*18] Here, both Candidate’s handwriting expert, John S. Gencavage, and Appellant’s handwriting expert, Michelle Dresbold, testified concerning the authenticity of Lawrence McNish’s signature. The Commonwealth Court found that Mr. Gencavage’s testimony was more credible than that of Ms. Dresbold....”

Dresbold gave reasons why she considered McNish’s signature on the petition false, such as slowly written, style of letters, breaks and endings of strokes. Gencavage said he could not tell whether the signature was genuine. The Supreme Court overturned the Commonwealth Court’s decision that the signature was genuine in part based on Gencavage’s testimony:

“Comparing the testimony elicited by these two experts, we believe that Ms. Dresbold presented substantial evidence to support Appellant’s claim that the signature of Mr. McNish was improper. On the other hand, we find that Mr. Gencavage’s opinion as to whether Mr. McNish’s signature was genuine was completely equivocal. Such equivocal testimony is simply inadequate to support the Commonwealth [*21] Court’s determination that Candidate sufficiently proved that Lawrence McNish’s signature was genuine, and therefore, we strike Lawrence McNish’s signature from the petition.”

COMMENTARY: The case report suggests neither expert had more than the voter registration signature to compare to the petition signature. If so, any positive opinion as to genuineness or falsity should have been discounted since there would then be no way to tell the degree of variation or consistency in McNish’s signatures. I suspect Dresbold was skilled at talking the talk of judges who customarily make positive findings with woefully inadequate evidence, while Gencavage did not adequately explain the inadequacies of the forensic situation. In such situations glib experts can only be countered by demonstration of inconspicuous features contrary to their opinion and by explanation of the proper interpretation of technical principles and their correct application. For example, the general rule that forgeries are written slowly applies to forgers who lack adequate skills of correct observation and proper imitation, whereas the ignorant or slick witness can contort this rule in various ways to prove the genuine to be false and the false to be genuine. Once an expert witness impresses you as a glib talker, your antennae for detecting the slick con should be fully deployed.

2003

1331. *Commonwealth v Watkins*, 577 Pa. 194, 843 A.2d 1203, 2003 Pa. LEXIS 969 (PA 2003); reargument denied, 2004 Pa. LEXIS 729 (Pa., Mar. 23, 2004); certiorari denied, *Watkins v Pennsylvania*, 2004 U.S. LEXIS 7179 (U.S. 2004)

COMMENTARY: A handwriting expert identified defendant's signature on a confession form.

2004

1332. *Commonwealth v Williams*, 524 Pa. 218, 570 A.2d 75, 1990 Pa. LEXIS 53 (1990); affirmed, 581 Pa. 57, 863 A.2d 505, 2004 Pa. LEXIS 3239 (PA 2004)

"Appellant's next two issues focus on letters he allegedly wrote to Marc Draper while in prison, in an effort to convince Draper to lie at trial. Appellant argues these letters were improperly admitted into evidence at trial because they contained prejudicial references to drug activity and to appellant's incarceration....

"With respect to appellant's argument that the letters contained prejudicial references to prior bad acts, it was made clear to the jury that the references to drug activity were merely part of the 'story' concocted by appellant in order to disassociate himself from the murder....

"Appellant argues the prosecutor's questions to the handwriting expert prejudiced him by suggesting he had tried to disguise his handwriting when he provided samples to the expert. The prosecutor's questions were asked in response to the expert's description of how he is able to detect attempts to alter or disguise one's handwriting; when the prosecutor asked if the expert could ascertain whether appellant had attempted to disguise his writing, defense counsel objected and the trial court sustained the objection. The expert never answered the prosecutor's questions, and the jury was later instructed counsel's questions do not constitute evidence."

COMMENTARY: It is a very rare appeal or supreme court case report where the handwriting expert may not testify regarding disguise. The rule is that it may be argued that a defendant who disguises handwriting in giving exemplars shows consciousness of guilt.

Bear with me as I repeat something. The case reports give evidence that one official takes the compelled exemplars and another examines them and testifies at trial. Typically the case reports never mention that the official taking them testified nor that a record of instructions given the writer and the exact procedures used were provided to the defense. The older published standards in journal papers specify that one taking compelled exemplars must keep a record exactly of the instructions given, the type of pen and paper used, the manner of writing, such as sitting at a desk or standing at a counter, and whether a special form was used. Each exemplar should be marked for identification, dated, and both writer and official initial. Why? The official taking the exemplars says

disguise your writing this way. The examiner, who was not involved in taking the exemplars, later testifies that he could not use the exemplars because defendant deliberately chose to disguise them. That misrepresentation then becomes evidence allowing an inference of guilty conscience about committing the crime. A nice, cheap way to get a conviction. And do note currently published standards in the field of document examination often lack such niceties as recording all such critical data about the investigation. Cases discussed herein report how government experts have no contemporaneous records of their work or alleged data, yet even years later they are permitted to testify as if their memory and original work were both technically impeccable. Notice too that all the alleged work to improve forensic services never includes such an inconvenience as being forthcoming and up front about keeping full records of performance and making them available to the defense.

2006

1333. *Commonwealth v Coleman*, 2006 PA Super 214, 905 A.2d 1003, 2006 Pa. Super. LEXIS 2130 (PA Super. 2006); appeal denied, 2007 Pa. LEXIS 968 (PA 2007)

COMMENTARY: Gus Lesnevich testified regarding Medicare fraud.

1334. *IN RE Nomination paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004...*, 588 Pa. 450, 905 A.2d 450, 2006 Pa. LEXIS 1546 (PA 2006); *certiorari* denied, *Nader v Serody*, 127 S.Ct. 995, 166 L. ED. 2d 712, 2007 U.S. LEXIS 123 (U.S. 2007)

NOTE: Duplication occurred in discussion of this case. See year 2004 under PA Courts of Appeal.

A panel of twelve judges conducted a line-by-line review of nomination petitions for Nader and Camejo for President and Vice President. Of 25,697 signatures reviewed, 18,818 were valid, and nearly two-thirds of the signatures were struck. “[T]his signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the [Appellants] through their representatives (not their attorneys) shocks the conscience of the Court.” The assessment of costs of \$81,102.19 against appellants was upheld. \$38,267.00 of this amount was for handwriting expert witnesses.

COMMENTARY: There have been many cases through the years where handwriting experts have contributed to the frustration of fraudulent petitions for election to public office. For example, see *Hamburg v State*, 820 P2 523 (WY 1991), discussed later.

2008

1335. *In re Nomination Tony Payton*, 945 A.2d 279, 2008 Pa. Commw. LEXIS 130 (2008 PA Commw. 2008); affirmed, review denied, application denied, 945 A.2d 162, 2008 Pa. LEXIS 505 (PA 2008)

At page 282: “On March 14, 2008, Candidate filed three motions for relief. First was a Motion in Limine to Preclude Testimony and Report of Petitioner's Expert. He noted that the case management order required expert reports and curriculum vitae by March 13 and that Objector failed to comply. Nevertheless, Objector's list of witnesses identified Bill Reis as an expert to be called at hearing, and Candidate requested that Mr. Reis be precluded from testifying or filing an expert report.” The motion was granted, but Objector’s motion to preclude Candidate’s expert Dresbold was denied.

At page 286: “With the assistance of the handwriting expert Ms. [Michelle] Dresbold as needed, the Court reviewed the remaining line-by-line challenges. In many cases the Court was able to find upon view that signatures were or were not genuine. When in doubt, the Court heard and weighed testimony from the expert witness.”

Footnote 1 reads: “Objector's Counsel questioned the use of the digital representation of electors' signatures contained in the Statewide Uniform Registry of Electors (SURE) for purposes of comparing the signatures on the nomination petition sheets by the Court and the expert rather than the original, physical voter registration cards. In the absence of any compelling reason to do otherwise, the Court determined to proceed using the SURE system to decide signature challenges, which this Court has done since it became available. See *In re Nomination Paper of Rogers*, 914 A.2d 457 (Pa.Cmwlth.) (one- Judge decision, Kelley, S.J.), aff'd, 589 Pa. 86, 907 A.2d 503 (2006).”

COMMENTARY: Dresbold authored *Sex, Lies and Handwriting; a Top Expert Reveals the Secrets Hidden in Your Handwriting*. My annotation of the book reads: “Cina Wong sued for plagiarism of materials on Jon Benet Ramsey case, the best material in the book, and forced admission of same. Otherwise, the book lives up to the flippancy of the low class title it sports.”

MM. RHODE ISLAND CASES.

1. Rhode Island trial courts.

2004

1336. *State v Picerno*, 2004 RI Super LEXIS 33 (RI Superior Ct Providence 2004); 2004 RI Super LEXIS 57 (RI Superior Ct Providence 2004)

2004 RI Super LEXIS 33:

Defendant denied initialing only two of several paragraphs on a form waiving

constitutional rights. At a suppression hearing he testified in such a way as to lose credibility with the court even before cross-examination. At [*31]: “Although his counsel attempted vigorously to prod defendant Picerno to state unequivocally that he did not initial paragraphs ‘7’ and ‘8’ of the rights form, the most that defendant Picerno would say is that he is ‘pretty sure’ he did not make the initials.” Completing his testimony, he moved for a continuance of the suppression hearing to call a handwriting expert to show he did not initial the two paragraphs in question. The State did not oppose the motion.

Pauline Patchis issued a “preliminary opinion” for defendant that he had not made the disputed initials, but for reasons unknown she did not testify. Defendant then produced Charles Shure to testify. At [*39] and following Mr. Shure comes in for critical review of his qualifications, and his opinion is rejected by the judge. The state produced a Mr. Breslin as an expert in rebuttal, who said he had no idea whether the initials were genuine or not. Neither witness was ruled to be an expert, there being no need to since unlike a jury the judge would not be misled by claims to expertise. Apparently neither witness reviewed the excellent papers in the professional literature on the examination of initials, because the court found there was no reliability to the exercise. However, in the instant case, both witnesses acknowledged Picerno’s known initials had no consistency, presumably meaning stable traits reliable for identification.

Although Mr. Shure comes in for extended disparagement of his qualifications, the bottom line is that the court gives him and Mr. Breslin the same evaluation at [*55]: “Without a credible opinion from Mr. Shure as to authorship and with an inconclusive opinion about authorship by Mr. Breslin, this Court was deprived of any scientific testimony that could assist it in further addressing the question defendant Picerno tried to raise concerning the initials. All that remained of the experts’ testimony was their musings about the physical similarities and dissimilarities between the known and questioned writings -- comparisons that the Court had done already, even prior to the reopened suppression hearing, without them. Neither of the experts’ pedestrian comparisons in this regard was at all helpful to the Court.

“Absent any assistance from the expert witnesses, this Court simply returns to its earlier view of the evidence surrounding execution of the rights form. See section B.1., *supra* (detailing evidence of waiver). Nothing about the initialing of the rights form itself changes this Court’s view of evidence.”

2004 RI Super LEXIS 57:

This report deals solely with whether wiretap surveillance evidence ought to be suppressed.

COMMENTARY: Mr. Shure had had Picerno make exemplars to be used as comparison material. This violated the *post litem motam* rule, but there is no mention that the State objected. Mr. Shure was a member of NADE, but as of this writing records show he was never certified by NADE. Though it is not true, as the Court was led to believe, that one can join merely by paying dues, the organization is open to the neophyte whom it endeavors to nourish into becoming better educated and eventually certified.

NADE certification is a rigid process requiring a written professional report, both written and oral tests, as well as documented experience and letters from attorney/clients verifying claimed experience and competence. I say this to warn the reader that representations about an organization in the case law might well be the false fruit of incomplete or even incorrect information from unknowing or biased witnesses, as it was the fruit of woefully incomplete and incorrect information in this case.

2. Rhode Island Supreme Court.

Its Supreme Court is Rhode Island's sole court of appeal.

1995

1337. *State v Scholl*, 661 A.2d 55 (RI 1995)

COMMENTARY: At page 58: "In addition, the state presented the testimony of Clarissa DeAngelis, a professional document examiner, who testified that in her opinion Scholl was the person who signed his name in the log book on the night in issue."

1997

1338. *State v Gomes*, 690 A. 2d 310 (RI 1997)

COMMENTARY: The testimony of "a handwriting specialist," Marc J. Seifer, Ph.D., was received.

1339. *State v Griffin*, 691 A.2d 556, 1997 RI LEXIS 101 (RI Supreme Ct 1997)

In affirming murder conviction, Supreme Court of Rhode Island held that "record evidence supported admission of expert testimony that defendant was author of threatening letter that was sent to prosecution witness while defendant was awaiting trial." This case report has a literary expression reminiscent of late Nineteenth and early Twentieth Century prose combined with later idiom. There was "the factual-trident that pinned Griffin to the murder." He killed victim because he "took mortal offense at this query." "Some of Griffin's compeers later heard him crow about the killing." That is only at page 557, and the entirety makes for delightful reading.

At page 558: "Griffin assigns error to the admission of handwriting analyst's testimony." He denied having written the exemplars used. "Comparing the handwriting in the warden's letter to the script on the waiver-of-rights form, the expert found multiple points of agreement.... His testimony limned the idiosyncracies of Griffin's penmanship, noted a number of significant comparable features, and concluded that Griffin was the author of the witness-threatening letter. In this court, as below, Griffin tries to undercut this opinion by identifying a host of perceived cracks in the expert's authentication edifice. But his arguments go to the weight of the expert's remarks, not to their admissibility." Then ending at page 559, there was ample opportunity for cross-

examination and to “emphasize any infirmities.... In brief, we see no basis for Griffin’s suggestions that the trial justice flouted Rule 901.”

COMMENTARY: I just had to quote the charming prose at length. Bottom line: The testimony is reliable and admissible. My sister Rita, a retired RN, told me of medical records a doctor where she worked early in her career would write. The best I can recall now is that his style went like this: “A dear, little old lady with the sweetest smile came in and said: ‘Oh, doctor, my tummy hurts so badly.’ Etc.” I can think of no reason why all of us technocrats could not humanize our reports with such humane and humanistic prose. Good Reader, I do hope now and again I have relieved your pain of plowing through these many pages and interminable words about human graphic misbehavior with some touches of humor that make for a prose that is both light and enlightening.

2005

1340. *McBurney v Roszkowski*, 875 A.2d 428 (RI 2005)

Document examiners testified for both parties as to the authenticity of McBurney’s signatures on key documents:

“Both parties also presented expert witnesses to testify about the authenticity of the signatures on the general release and confidentiality agreement. First, Pauline Patchis, a board-certified document examiner, testified that after examining and comparing the signatures on the release to five known signatures of McBurney, she was of the opinion that the questioned signature on the general release and confidentiality agreement was not genuine. Patchis noted, however, that she had not examined originals of the contested document, instead comparing only copies of the release to known samples of McBurney’s writing.

“The defendant presented Alan T. Robillard as an expert in questioned document examination. Robillard, an FBI-trained *435 handwriting analyst, testified at length about his training and the methodology utilized in his field, including the highly technical protocol employed by handwriting and document analysts. Robillard testified that he subjected the documents in question to the standard protocol for evaluating questioned handwriting. Unlike Patchis, Robillard conducted his tests and examination on the original document, which, he said, allowed him to analyze the pressure placed on the pen used when the questioned signatures were written. Robillard opined that each of McBurney’s signatures on the general release and confidentiality agreement were, in fact, authentic.”

At page 435 the evaluation given this testimony by the trial judge is quoted: “In the opinion of this Court, having heard the testimony, having reviewed the extensive exhibits forming part of Mr. Robillard’s testimony, having heard the methodologies utilized by him, the scientific investigation by him, and being satisfied that his testimony was far more credible than that of Pauline Patches [sic], * * * the Court finds the testimony of Mr. Robillard to be far, far more convincing.”

Then at page 437 the Supreme Court of Rhode Island summarizes it all: “That finding was based largely upon the expert testimony of Alan T. Robillard, who performed a methodical and highly technical analysis of McBurney’s handwriting sample. The trial justice determined that Robillard’s testimony regarding the signatures on the documents in question was inherently more reliable than that offered by McBurney’s expert, Pauline Patchis, whose methods of examination were less impressive to the hearing justice. Rejecting her testimony, the hearing justice concluded, ‘Patches [sic] * * * essentially, among other things, testified almost to the effect that what she does is look at the signatures and note various things[.] * * * [A]lmost anybody could do the same thing[.]’”

COMMENTARY: I give these extensive quotes to emphasize how technology can make a very deep impression. From what one can read of Mr. Robillard, it is all honest and excellent application of relevant technological tools. Unfortunately, there are a number of document examiners who seem to have discovered the magical impression that technological wizardry can have on the layperson. I have had a number of cases where the opposing examiner offers a list of technical tools turned into gadgetry, asserting they were essential to the discovery of otherwise undiscoverable hard facts. Yet the special facts each tool is designed to discover are not reported, and the purported facts reported would not require the technology claimed to have been used, and at times such technology might even hamper the discovery. Yet I have not noticed that cross-examining attorneys bring out that any of this is mere showmanship. I suspect the victim of the scientific rabbit’s hat fears there might really be an awesome and devastating reality hidden in the mounds of forensic manure.

It was not reported from whom Ms. Patchis obtained her board certification, but the report hints that they need to stiffen up their scientific and technical requirements.

1341. *State v Andujar*, 899 A.2d 1209 (RI 2006)

COMMENTARY: Alan Robillard testified that defendant wrote a threatening letter. Additionally, by indentations and tear patterns he proved it came from a legal note pad of defendant’s.

2008

1342. *Estate of Louis J Giuliano, Sr.*, 949 A.2d 386, 2008 R.I. LEXIS 74 (RI 2008)

“Curtis Baggett, a handwriting expert, compared documents containing the decedent’s known signature with the signature on the will, and he concluded that the signature on the will was not the decedent’s own. He offered testimony concerning his methodology in examining the signatures and his findings on the technical [*5] differences between the shape of letters in the known signatures and the signature on the will. Mr. Baggett testified that it was his opinion that the signature on the will was not the true signature of Louis J. Giuliano, Sr.....

“The judge concluded that neither side’s handwriting expert was particularly

persuasive, but he added that he thought the methodology that plaintiffs' expert used was more generally accepted in the field. He stated that the testimony of the three attorneys established that the signature on the will was 'more probably than not' the signature of the decedent."

After some legal proceedings, plaintiff moved for summary judgment, and Mr. Baggett's affidavit was insufficient to defeat the motion. The hearing justice gave a sardonic evaluation of Baggett's affidavit as a bald statement: "Well, that's helpful.... How can I say, 'Oh, wow, this dispute is genuine.'?" The court of appeal reversed the granting of summary judgment since the hearing justice ought not have considered the evidential weight of what is described as an evidentially weightless affidavit.

COMMENTARY: Hopefully at the retrial the evidential emptiness of the expert's expertise would have weighed less with the fact-finder than it did with the court of appeal.

35 A. 3d 870:

Having written the above commentary, years later I read the supreme court decision for the second appeal based on the rehearing. It seems "expert" testimony was not offered at the rehearing, but challenges were offered that one has a hard time taking seriously other than the law requires they be, probably since in other cases they could well be based on some reasonable reality. One such quizzical challenge to the trial judge's finding that the contested will was genuine is that proponent of the will and plaintiff at trial, Lett, had not proven defendant's dad, decedent, was over the age of 18 when he signed his last will and testament. Footnote 3 reads: "We note that Giuliano, Sr.'s death certificate, which was entered as an exhibit at trial, indicated that he was born in 1941."

Maybe just for appellants of this persuasion the courts of appeal might be allowed to charge not only costs and attorneys fees born by the prevailing party but also a hefty slap on the pocket book of the overly ridiculous appellant and of the legal counsel helping with such silliness. But then, not having a law degree, it is most likely that I do not understand the brilliance of such legal creations that give the layperson so much pause.

1343. *Notarantonio v Notarantonio, et al.*, 941 A.2d 138, 2008 R.I. LEXIS 27 (RI 2008)

The case report begins: "The trial justice quoted Shakespeare to characterize the family dispute that engendered this lawsuit: 'How sharper than a serpent's tooth it is to have a thankless child.' n3 Regrettably, it is apparent that this once close-knit family has become irreparably fractured in a way that judicial opinions are not likely to repair."

Footnote 3 reads: "William Shakespeare, *King Lear*, act 1, sc. 4."

At the very end the entire discussion of handwriting evidence is given: "With respect to the purported January 1995 transfer of the seventeen shares of JGF stock, the trial justice accepted the testimony of Mary's daughters that the signature on the document was not Mary's. The trial justice also found credible the testimony of a handwriting expert who opined that Mary's signature on the document was not genuine.

Additionally, the trial justice noted that Mr. Foley testified at trial that he had not witnessed Mary sign the document.”

COMMENTARY: A case of routine admissibility, and also, it seems, routine wrenching of family relations when greed for material inheritance outpaces the value one holds for the family’s genetic and social ties. When court personnel, attorneys and experts witness the triumph of the former over the latter with its sad consequences, hopefully it inspires them to cherish the fragile, but far more precious, treasure of family love.

1344. *Shorrock v Scott*, 2007 R.I. Super. LEXIS 56 (RI Super. 2007); affirmed, 944 A.2d 861, 2008 R.I. LEXIS 46 (RI 2008)

COMMENTARY: Handwriting expert Marc J. Seifer, Ph.D. testified.

2016

1345. *Voccola and Voccola v Forte, et al.*, Nos. 2013-216-Appeal, 2013-217-Appeal, 2013-220-Appeal. (RI 2016)

COMMENTARY: Pauline Patchis, plaintiffs’ handwriting expert, Marc Seifer, defendants’ handwriting expert, testified to the opposing opinions.

NN. SOUTH CAROLINA CASES.

1. Trial courts for South Carolina.

I have no case reports for trial courts of South Carolina.

2. South Carolina Court of Appeals.

2011

1346. *State v Campbell*, Unpublished Opinion No. 2011-UP-059 (Ct. App. SC 2011)

Campbell claimed the trial court erred in allowing Joe Jordan, an officer with the State Law Enforcement Division, to testify that he sent copies of an insurance application to the handwriting analysis unit and learned the signature on it was Campbell’s. “A forensic handwriting expert also testified he examined the signature on the Auto-Owners application and determined Campbell ‘probably’ signed Father’s name as the proposed insured. Therefore, we find Jordan’s testimony was merely cumulative to the other evidence presented at trial, and any error in allowing the admission of Jordan’s testimony was harmless.”

COMMENTARY: Once more the prosecution harmlessly and without suffering any sanction breaks the rules instituted to prevent unfair harm by presenting evidence that is hoped to harm Defendant unfairly.

3. South Carolina Supreme Court.

1999

1347. *State v Council*, 335 S.C. 1, 515 S.E.2d 508 (SC 1999)

COMMENTARY: Testimony from handwriting experts was received.

2006

1348. *Brandt v Gooding*, 368 S.C. 618, 630 S.E.2d 259 (SC 2006)

At page 623, a circuit judge said Gooding's motion for contempt if a letter, tendered by Plaintiff, proved to be forged, should wait for determination whether it was forged. If genuine, the letter would prove legal malpractice against Gooding.

"In subsequent motions before a second circuit court judge (trial court), Gooding moved for summary judgment, dismissal of the cause of action, and contempt. At the hearing on the second motions, Gooding presented the testimony of Marvin Dawson (Dawson), an expert in document examination and authenticity. Dawson opined that the letter was fraudulent.

"Dawson testified that the Edisto Farm Letter was printed on a type of paper that was not developed until 2000, almost five years after the letter allegedly was sent. In addition, Dawson found that the letter did not contain the appropriate watermark. In a report, Dawson cited numerous inconsistencies and characteristics indicating that the document was a forgery."

The second judge before whom the motion was heard found the letter to be forged and sentenced Brandt to six months jail for contempt of court, along with other sanctions. All was upheld on appeal.

COMMENTARY: Most often there is no downside to having one's forgery found out in court. Add in the high success rate for forgery, and it is maybe the safest and paradoxically maybe the most legally sanctioned crime to engage in. One easily finds cut-rate practitioners on the outer edges of document examination and some high price, "highly qualified" examiners at the core of the profession ready, able and willing to prove any genuine document false and any false document genuine for the proper professional fee.

Those who publish, present and otherwise rant over the vagaries of forensic services miss the crux of the problem. As long as litigants and attorneys need false expert evidence to win and are willing to pay the going price, there will be sufficient supply to meet the demand. The opinion-reliable expert will simply meet any and all paper requirements and play all the protective games required. Since they now better all the would-be reformers, what makes the would-be reformers think they will better the opinion-reliable experts in the future by creating a complex bureaucratic process ruled by some czar or aristocratic board? Odds are the board would include some of the opinion-

reliable experts or their good friends from the same forensic club.

1349. *State v Davis*, 364 S.C. 364, 613 S.E.2d 760, 2005 S.C. App. LEXIS 84 (S.C. Ct. App., 2005); vacated in part, reversed, and remanded, 371 S.C. 170, 638 S.E.2d 57, 2006 S.C. LEXIS 373 (SC 2006)

COMMENTARY: A handwriting expert witness for the State testified that the signature and date on a letter were in defendant's handwriting.

2011

1350. *State v Brandt*, 713 SE 2d 591, 393 S.C. 526 (SC 2011)

At page 534: "In April 2001, Marvin Dawson, a private document examiner, analyzed the letter produced by Brandt and concluded the signature on the letter was not genuine. Dawson further determined that the letter was not produced on the computer or typewriter used by the secretary at Edisto Farm Credit, was not sent from the fax machine at Edisto Farm Credit, did not have a watermark like other Edisto Farm Credit paper, and had microscopic security dots, which represented technology that post-dated the letter.

"After Dawson's review, the letter was sent to the United States Secret Service for further analysis. Susan Fortunato, a document analyst for the Secret Service, analyzed the Edisto Farm letter. During her examination of the letter, Fortunato discovered a serial number in a pattern of yellow dots. Based on these dots, Fortunato determined that the letter had been produced on December 10, 2000 around 3:00 p.m. using a Xerox machine with the serial #043391 located at a Kinko's copy shop in Augusta, Georgia. Fortunato also learned that the copy machine was not installed in the Kinko's shop until January 6, 2000. Because the pattern of yellow dots did not exist until 2000, Fortunato definitively testified that the document 'didn't exist until the year 2000.'"

COMMENTARY: The pattern of yellow dots becomes visible under a blue light. Special codes identify the meaning of each pattern. Defendant did win something because the South Carolina Supreme Court reduced his conviction from a felony to a misdemeanor.

2013

1351. *State v Cope*, Opinion No. 27303 (SC 2013)

A woman testified to receiving incriminating letters from Defendant.

"The State also called a handwriting expert to testify as to the authenticity of the letters.

"In his defense, Cope presented expert testimony that the letters were forgeries as well as evidence that the paper the letters had been written on were not available to inmates at the prison. Simmons was also impeached with evidence she had criminal forgery charges pending against her and that she had consented to discipline by a nursing

board for forging documents.”

COMMENTARY: If the testimony about the paper was true, it did not impress the jury since Cope was convicted. There were other issues raised on appeal, but no errors were found by the Supreme Court of South Carolina.

OO. SOUTH DAKOTA CASES.

1. South Dakota Trial Courts.

2005

1352. *Adams v Weber, Petition for Writ of Habeas Corpus*, CRI. 03-107 (SD, 5 Judicial Cir., 2005)

Karen Runyon testified for prosecution at the original trial and violated several standards, while defense counsel failed to prepare himself to challenge her and cross-examine, as well as to have his own expert to advise him and testify. At the *habeas corpus* hearing, Allan Keown, Vickie Willard and Pat Girouard testified for Adams.

COMMENTARY: The decision catalogs a handful of violations of standards by Runyon and a raft of ineffective assistance by trial counsel, because of which application for writ of *habeas corpus* was granted.

Andrew Sulner made this case decision available in the book, *American Academy of Forensic Sciences, Annual Meeting*, 2014. Workshop #10: “Bias in forensics.”

2. South Dakota Supreme Court.

The Supreme Court is the only court of appeal in South Dakota.

1997

1353. *State v Loftus*, 573 N.W.2d 167, 1997 SD 131 (SD Supreme Court 1997)

The concurring opinion begins at ¶31: “The majority declined to undertake this question, but I believe it is of sufficient importance to merit discussion and concern.” Detective Kendell Remboldt testified he was not a handwriting expert, but the Trial Court permitted him to give his opinion after he ‘compared writings in a notebook discovered during the search of Loftus’ residence and writings found on a cooler door at the liquor store.’ The sole purpose was to tie Loftus to the scene of one of the crimes. The rule is that only an expert can give a handwriting opinion from comparison without prior knowledge of the suspect writer’s handwriting. Further, the two writings were of unknown origin, though Loftus’ wife testified it was her notebook, and items in the notebook confirmed her claim.”

At ¶35 the discussion concluded: “What saves this from being prejudicial error, was the other circumstantial evidence in this case came along with Remboldt’s candid

admission before the jury that his analysis was not very beneficial because he lacked the expertise to furnish the very opinion he rendered.”

COMMENTARY: South Dakota rules of evidence permit expert handwriting evidence, and the concurring opinion can be argued to be based on its reliability being assumed.

2010

1354. *State v Corean*, 791 NW 2d 44, 2010 SD 85 (SD 2010)

Footnote 9: “In addition to her hearsay objection, Corean objected to this letter, pointing out that at the post-trial hearing Tiegen testified it was his handwriting but he did not remember writing the letter. Corean also pointed out that the words ‘(James and Jamie.) Savvay?’ are lighter in color, and Tiegen testified that he could not remember if he wrote those words. But there was evidence from which the jury could have concluded that Tiegen authored the entire letter. Janice Tweedy, a forensic document examiner, testified: ‘I looked at that area because it was lighter than the other area around it.’ She opined: ‘I didn’t see any evidence of it being a simulation or a forgery.’”

The trial judge ruled the letter to be relevant since it continued the conspiracy that led up to the crime charged by instructing a co-conspirator to withhold information from that co-conspirator’s attorney.

COMMENTARY: Tweedy showed good judgment in investigating anomalies on her own and thus preempting an unexpected challenge.

2016

1355. *O’Neill v O’Neill*, 2016 SD 15 (SD 2016)

In a dispute between brothers over equitable division of assets of corporations they owned jointly, a purported agreement presented by one of them prevailed on credibility findings by the circuit court, affirmed by the Supreme Court of South Dakota. Janis Tweedy was document examiner for the losing brother. She is reported as having said his signature on the purported agreement was false because it was misaligned.

COMMENTARY: I have seen only a few of Ms. Tweedy’s writings, and from them I infer she would have given much more than a single observation of misalignment. Additionally, she would have used her ability to reason how several observations are interrelated to create proof, and not just suspicion, for her opinion. I believe her writings are well worth considering if an expert has a case involving an issue she wrote about.

PP. TENNESSEE CASES.

1. *Tennessee Trial Courts.*

I have no case reports for Tennessee trial courts.

3. *Tennessee Courts of Appeal.*

2000

1356. *Ali v Professional Real Estate Developers, Inc.*, 2000 Tenn. App. LEXIS 97 (Ct App TN 2000)

“With respect [*4] to the authenticity of Ms. Ali’s signature on the power of attorney, two expert witnesses testified at trial. Thomas Vastrick, a forensic document examiner, testified that he simply did not know whether the purported signature of Ms. Ali on the power of attorney was genuine. Jane Eakes, a certified document examiner specializing in handwriting, testified as to her belief that the signature on the power of attorney was, in fact, the signature of Ms. Ali.” Since Ms. Ali presented only her own testimony that her signature was forged, she failed to carry her burden of proof.

COMMENTARY: Vastrick wrote a fine little book for the layperson, *Forensic Document Examination Techniques*, IIA Research Foundation, 2004. Eakes is a member of National Association of Document Examiners and a friend of the author.

1357. *In Re: Estate of Blanche Marie (Buckner) Peery; Perkins v Swafford, et al.*, 2000 Tenn. App. LEXIS 117 (TN App. 2000); permission to appeal denied, 2000 Tenn. LEXIS 495 (TN 2000)

Larry Miller testified to arthritic handwriting, and Shaneyfelt said it was forgery. Wife of nephew said arthritis messed up the handwriting. Forgery was found by jury and upheld with costs to appellant.

COMMENTARY: Routine case of admissibility, and seemingly routine “expert” unawareness of what medical science has shown about handwriting and various illnesses through research. Miller is a member of National Association of Document Examiners and author of an authoritative text in forensic photography. In a similar vein to thinking effects of arthritis are indicia of forgery, a colleague in Maryland told me of an opposing examiner who in several cases explained all indicia of forgery as caused by a grainy desk top. This information should console attorneys and litigants who cannot prevail on the truth but that with enough money they can shop and eventually find someone who is willing to prove the genuine to be false and the false to be genuine. Maryland ought not be the only state afflicted with many grainy desks.

1358. *Estate of Acuff, et al., v O'Linger*, 56 S.W.3d 527, 2001 Tenn. App. LEXIS 238 (Ct Ap TN 2001); subsequent appeal, 2003 Tenn. App. LEXIS 664 (TN Ap 2003); appeal denied, 2004 Tenn. LEXIS 190 (TN 2004)

The discussion has to do with 2001 Tenn. App. LEXIS 238.

The factual issue takes little space, but legal issues are extensive and detailed. After Acuff's death, O'Linger recorded two deeds purportedly signed by decedent in her favor and notarized. The factual issue was whether the deeds bore forged signatures. An advisory jury returned a unanimous verdict in favor of plaintiffs and against O'Linger. The judge had instructed the jury that the burden of proof was by a preponderance of the evidence, and the judge accepted the jury's advisory finding and ruled in favor of plaintiffs that the deeds were forged. At [*3] the Court of Appeals states: "It is easy enough in this case to identify the controlling issue. The two deeds are either forged or they are not forged. That having been said, the complications begin." In simplistic summary, the Court of Appeals found that the proper standard was proof by clear and convincing evidence, and thus it reversed the Trial Court and dismissed the suit.

The expert handwriting evidence, which was offered only by plaintiffs, is considered at [*37] *et seq.*: "After a very extensive 'gate keeping' hearing under principles established by the Supreme Court in McDaniel v. CSX Transportation, Inc., 955 S. W. 2d 257 (Tenn. 1997), the trial judge allowed the testimony of Thomas Vastrick and Brian Carney, offered by the plaintiffs as handwriting analysis experts on the basis that their testimony could 'substantially assist the trier of fact' under Tennessee Rules of Evidence 702 and 703. While the Tennessee standard for admissibility set forth in *McDaniel* is more restrictive than the rule under its federal counterpart, we are still bound by the general rule that questions regarding the admissibility, qualifications, relevancy and competency of expert testimony are left to the discretion of the trial court. McDaniel v. CSX Transportation, Inc., 955 S.W.2d 251, 263 (Tenn. 1997); State v. Ballard, 855 S.W.2d 557, 562 (Tenn. 1993). We see no abuse of discretion in the admission of the testimony of Vastrick and Carney. Both of these handwriting analysts testify that the signatures on the two deeds in issue are in fact tracings made from a genuine signature of John Acuff appearing on an exhibited document in the case called a 'landlord waiver.' This testimony subjected to vigorous cross-examination is to be weighed along with all other evidence by the trier of fact under the 'clear, cogent and convincing' evidence rule."

The Court of Appeals considered this expert testimony to be no more than "preponderance of evidence" because of the judge's instruction to the jury. Further, at [*57], it is stated that the expert's opinion would entail "an active conspiracy" among five people. "The evidence of the plaintiffs and particularly the expert handwriting analysis from the witnesses Vastrick and Carney casts troublesome shadows in the case but considered as a whole, the evidence in the opinion of this Court does not establish that it is 'highly probable' that the deeds of August 16, 1996 and September 30, 1996 are

forgeries.”

The subsequent appeal only considered whether the trial court upon remand could grant defendant’s Motion for Discretionary Costs. Upon appeal by plaintiffs, the award was reversed with costs of the appeal charged to appellee/defendant.

COMMENTARY: First, the Court of Appeals upholds the trial court’s finding that the two experts were reliable under standards more restrictive than the corresponding Federal standards, and that makes the case well worth citing to support admissibility in future hearings. Second, once more a Court of Appeals equates our term “highly probable” with “clear and convincing.” Third, I find it hard to believe that these two experts in tandem did not provide evidence that was at least in itself “highly probable,” if not “definite,” of a tracing, particularly since they identified the source signature. The decision does not say why the case was dismissed by the Court of Appeals rather than remanded to permit plaintiffs to make their case by the higher standard, particularly since the Court of Appeals sets forth how very confusing and contradictory were Tennessee rulings on the issue of burden of proof in such cases.

I have been informed that Denbeaux was offered as an expert witness at trial by defendant. He was excluded but permitted to cross-examine plaintiffs’ handwriting expert at trial. My informant said the man did a poor job of it.

2003

1359. *In the matter of the Estate of Joan Forshea Pearson*, 2003 Tenn App LEXIS 716 (TN App Jackson 2003)

At [*4]: “Finally, the trial court allowed the filing of a report from Thomas W. Vastrick, a Forensic Document Examiner....” Vastrick concluded from handwriting examination that decedent had only written payee’s name and payor’s signature on a check in question. From ink examination he concluded that all other entries on the check were written with one or more other pens than decedent used. The Court of Appeals adopts Vastrick’s conclusions at [*10]: “The only portions of the check written by Pearson were the name of the payee and Pearson’s signature.” The case was remanded.

COMMENTARY: This is one case of many where the expert did not testify but the expert opinion was received and relied on by the Court. It can be reasonably argued that such cases also support the thesis of general judicial finding of legal and technical/scientific reliability for the field of forensic handwriting examination. However, I do not include such cases except for this illustrative example.

1360. *State v Goltz*, 111 S.W.3d 1 (Ct. Cr. App. TN 2003)

Conviction was reversed and remanded due to prosecutor’s improper final argument. He in effect testified to the quality and credibility of his witnesses, as at page 7: “...Robert Muehlberger, probably one of the finest handwriting analysts in the country....”

COMMENTARY: Whatever the needed bolstering for other prosecutorial

witnesses, I suspect no one in the profession would think Muehlberger either needed or would appreciate such improper argument in his favor.

2005

1361. *Estate of Alfred O. Wooden, et al., v Hunnicutt, et al.*, 2005 Tenn. App. LEXIS 646 (TN App. 2005); appeal denied, 2006 Tenn. LEXIS 353 (TN 2006)

The will in question was found to be a forgery by clear and convincing evidence although the handwriting expert could not be so sure. “[Vastrick] could not say beyond a reasonable doubt that Testator did not sign the Quitclaim Deed, however, he did testify that there were significant differences, including the skill level used, between the verified signatures and the signature on the Quitclaim Deed and that was a very strong indicator of non-authorship.”

COMMENTARY: In ASTM standard for expressing opinions in document examination, “indications” is less assured than “probable.” In an older case it was said that the jury could be certain even if the handwriting expert was not. See, *U.S. v Currier*, 454 F.2d 835 (1 Cir 1972), at page 837: “Although the government expert could not testify with certainty that the erased words were written by the defendant, there was sufficient evidence for the jury to believe they were.” And they had to believe it beyond a reasonable doubt.

2009

1362. *Mitchell v Madison County Sheriff’s Department, et al.*, 325 S.W.3d 603 (TN Ct. App. 2009)

The case report gives an extensive and penetrating analysis of both the discharging of Mitchell from the Sheriff’s Department and the hearing before the civil service commission. An anonymous postcard was received by a member of the department and a second by the wife of another. If one knows the proper way to investigate anonymous notes, also called poison pen letters, one will find this investigation to be a comedy of errors. Michael Robertson was contacted by the department to identify the writer of the anonymous postcards. An array of anomalies undermined his identification of Mitchell as the writer, one being that on the day the cards were mailed from another state, Mitchell was on duty at the local jail.

Thomas Vastrick was document examiner for Mitchell. His opinion is described as simply being that Mitchell could not be either identified or eliminated as the writer.

COMMENTARY: This case offers several salutary lessons for handwriting experts. Though there was no court hearing, only one before the civil service commission, I include the case as it so excellently demonstrates what happens when an expert inexpertly fails to follow proper and long established procedure in examining anonymous notes. It also is an excellent example of factual assessment and logical analysis by a court

of appeal. It seems to me, as a layperson in regards to the law, it is also an excellent piece of legal reasoning. I wonder if Vastrick's evidence included much more than a mere saying he could not say whether Mitchell wrote the notes, but also an explanation why it was not scientifically or technically possible. It might be like the experience I had in court once when I said the suspected writer could not be identified. The judge said I did not have an opinion. I responded I most certainly did, namely that an expert could not identify the writer and for very sound reasons. My friend and colleague Jacqueline Joseph of Portland, OR, wrote a fine paper for *NADE Journal* on the unidentifiable handwriting and what makes it so. *19 Journal of the National Association of Document Examiners*, "The unidentifiable handwriting; an anonymous note case, 31-35 (Dec. 1996). It is available open access on Internet Archive. See same piece in Spring 1997 issue for corrections of misprints.

Robertson's job at the Secret Service should have been looked into. The four-week course, most often said to be two-weeks, was most likely only the survey course given to investigators so that they will know what genuine document examiners could do for them. See *Gill v Gill*, an Indiana case discussed herein, for an example of an ordinary investigator parlaying the little two-week course into a post-retirement career as a government-trained document examiner. One colleague of mine said that upon investigation they found that the opposing examiner, long posturing as a government-trained and experienced document examiner at the Secret Service, had actually been a janitor for his entire career there.

1363. *Thompson, Individually, and as Executor of the Estate of Gertrude Thompson, Deceased v Thompson, et al.*, 2009 Tenn. App. LEXIS 99

COMMENTARY: A handwriting expert testified that checks in question were written by decedent.

2010

1364. *Mid-south Industries, Inc., v Martin Machine & Tool, Inc., et al.*, 342 S.W.3d 19 (TN App. 2010)

Spydell Davidson, a defendant/appellant, alleged that Ms. Jane Eakes and Ms. Ann Cherry had proven fraud. However, the court said: "We disagree with Mr. Davidson's interpretation of the testimony given. Certified document examiner, Ms. Jane Eakes, testified that Mr. Davidson and witness Ann Cherry signed a May 16, 1996 agreement which allowed either party to terminate the agreement....

"We find no support for Mr. Davidson's argument that either Ms. Eakes or Ms. Cherry, 'testified that the contract proffered by [Mid-South] was essentially a fraud[.]' In fact, neither witness used the word 'fraud' in her testimony, and Ms. Eakes even pointed out that she was not testifying as to the circumstances surrounding the document's execution."

COMMENTARY: A hazard of any profession that uses many words to express many thoughts is that inevitably the slower witted will misunderstand, and the overly clever will misrepresent, what one said. Ms. Eakes is a member of NADE.

2012

1365. *Middle Tennessee State University v Simmons*. No. M2011-00825-COA-R3-CV. (TN Ct. App. Nashville 2012)

Thomas W. Vastrick was court-appointed expert to examine signatures related to student loans that Simmons claimed were forged. Vastrick concluded they were written by Simmons, and the court denied Simmons' request to obtain his own handwriting expert, though he could depose Vastrick who later testified in court.

COMMENTARY: I have had a number of cases of student loans where the alleged student borrower denied the signatures. These were all by small private schools who put the loans through U.S. Department of Education that directly pays the school and then goes after the "student" to collect. In one case the "student" was imprisoned all during the time he was supposed to have applied for the loan and attended the school, an incidental fact that did not impress the collectors at the U.S. Department of Education. The Government places the burden of proof on the alleged borrower, the school being off the hook as far as I can tell. Thus it is an easy, failsafe method to earn payment for services never rendered. Apparently, when things get hot, the management closes that school and opens another somewhere else.

1366. *Shearer, et al., v McArthur, et al.*, No. M2012-00584-COA-R3-CV. (App. TN 2012)

"The plaintiffs' final witness was a handwriting expert, Roy Cooper, Jr., who testified that, with machine copies such as the exhibit of the option agreement, an expert could only testify with 85 to 90% certainty. He was asked to compare the signatures on the option agreement with examples of the signatures of Mr. Young and Mr. McArthur and opined with 85% certainty that the signatures on the option agreement had been written by Mr. Young and Mr. McArthur."

COMMENTARY: It is ill advised to testify to a numerical, percentage opinion in handwriting identification. The only situation where one could offer reliable evidence for the number or range of numbers chosen is where physical impossibility to sign is proven, giving 100% certainty of non-signing.

Let me give a little bit of refinement to that "only." Hypothesize that we are asked whether Mr. X signed a document in dispute. We have 100 exemplar signatures by Mr. X. For any given trait we will see it in a certain number of exemplars and not see it in the rest. So if only 20 exemplars have the very beginning of the signature with a hook, we know as a mathematical certainty that 20% have the initial hook and 80 % do not.

However, we cannot claim that, among all of Mr. X's exemplar signatures existent

in the world at this moment, 20% begin with a hook and 80% do not. Why? Because whatever the cause of his making an initial hook, it is not an inevitable, physical law of nature that he does or does not do so. Additionally, on any given signature he may deliberately make an initial hook or deliberately refrain from making one. Therefore, since the writing activity, as are all human acts, is either entirely or partially subject to choice, we only have moral certainty regarding the probability of the initial hook appearing in any future signature by Mr. X.

This does not mean handwriting identification is entirely subjective or unreliable, rather it means we are engaging in a kind of assurance that governs more than 90% of our life choices and of which we are mostly oblivious, especially if we are hidebound, died-in-the-wool, highly conservative, nose-to-the-computer-calculator mathematicians. When Mrs. Browning said, "How do I love thee? Let me count the ways," she did not give a single mathematical datum. Yet only a fool would doubt the genuineness and depth of her love.

2013

1367. *Smith v Smith*, No. E2011-02430-COA-R3-CV (TN App. 2013)

"Diane Peterson, a privately trained forensic document examiner, was accepted without objection as an expert in the field of handwriting analysis. She reviewed several of Decedent's known handwriting signatures and compared them with documents Son alleged had been forged. She identified several inconsistencies with eight of the nine documents. She asserted that it was 'highly probable' that Decedent did not sign the first four documents, while she also asserted that Decedent 'definitely' did not sign four of the remaining documents. However, she asserted that it was 'probable' that Decedent signed the ninth document. She also reviewed several of Son's known handwriting signatures and compared them with one signature that Son alleged had been forged. She found that Son did not sign the questioned document.

"Ms. Peterson conceded that several of the known documents she used in her analysis were not original documents and that all of the questioned documents were not original documents. She admitted that she preferred to review original documents. She explained that because she exclusively analyzed copied documents relating to four of the questioned signatures, she could only assert that it was 'highly probable' that those signatures were forged."

It was not error for the trial court to credit contrary evidence over Ms. Peterson's testimony.

COMMENTARY: With what little information given us in the case report concerning Ms. Peterson's work, we cannot take fault with her. For example, where she made an identification based partly on copies, she limited it to highly probable, whereas the opinion of elimination was definite. For the latter all that was needed were sufficient significant differences that could be credited to the original writing and not the copying

process. The criticisms leveled at her in the case report are unjustified for the reasons given for them.

2014

1368. *Mynatt v Lemarr, et al.*, No. E2013-02347-COA-R3-CV (Ct. App. TN 2014)

The report opens with: “This appeal involves property that the plaintiff alleged was transferred by a deed with a forged signature. The plaintiff filed an action to have the deed, filed over a decade earlier, set aside. The defendants contended that the signature on the deed was an authorized assisted signature, and was recorded and published within a few days after it was made. The defendants further asserted that they had no obligation to announce to anyone they had obtained the property. The trial court found the plaintiff failed to carry the burden of proof necessary to void the deed. The plaintiff appeals. We affirm.”

COMMENTARY: Thomas Vastrick as Plaintiff’s expert is quoted explaining why the signatures in question were not authentic and why they were not assisted signatures. Making a safe assumption that he would have provided clear demonstrative exhibits in support of his opinion, if I had been a juror in a criminal trial (in what was in reality a bench trial in civil court), I would have voted for a finding of forgery beyond reasonable doubt. If, as a layman unqualified in the law, I were ill-advised and foolish enough to offer a suggestion that I never would offer, it would be this: If you wish to obtain property by forgery in Tennessee, be sure to have like interested persons act as witnesses and a public notary for the right price to declare the forgery solemnly genuine, and file the documents in the best of form and as quickly and as secretly as possible. If you intend to overturn a similar document as a forgery, read this case to know the very high and nearly impossible evidential mountain you need to climb.

4. Tennessee Supreme Court.

1994

1369. *State v Hutchison*, 898 SW 2d 161 (TN 1994)

At page 168: “In addition to the Rule 16 violation, the defendant objects to the admission of the letters, claiming that only because of the court’s prejudicial error was the State prepared to introduce them. Before a previous, aborted trial, the defendant sought reimbursement for a document examiner in an ex parte hearing pursuant to T.C.A. §§ 40-14-207(b). Hutchison alleges that the court inadvertently acknowledged this request at the end of the prior trial, thus putting the State on notice of the need for its own examiner. With no record of the previous trial, we cannot review the matter. We do, however, observe that the State originally called Dr. Larry Miller to identify the defendant’s letters to Ricky Miller. Because of Dr. Miller’s availability when the Varnadore letters appeared,

the defendant was not prejudiced by any earlier revelation by the court.”

COMMENTARY: Dr. Miller, a member of NADE, heads the forensic department at East Tennessee State University where they offer a graduate certificate in document examination.

2000

1370. *Coe v State*, 17 S.W.3d 193, 2000 Tenn. LEXIS 116 (TN 2000); motion denied, 17 S.W.3d 249, 2000 Tenn. LEXIS 149 (TN 2000); *certiorari* denied, *Bell v Coe*, 529 U.S. 1034, 120 S. Ct. 1460, 146 L. Ed. 2d 344, 2000 U.S. LEXIS 2200 (2000)

Defendant appealed in part on the basis that in his competency hearing he was not granted a continuance to find a handwriting expert. The court granted funds to do so, but counsel for defendant waited until the hearing to ask for a continuance when it was known that the state would call its expert. However, the court stated it did not consider the handwriting expert’s testimony in making its decision regarding defendant’s competence to stand trial.

COMMENTARY: It was a useless presentation of handwriting expert testimony. One cannot fault the prosecutor, since at trial one has to have all bases covered or risk losing on the smallest of points. For want of a nail the horseshoe, horse, rider, troop, cavalry, army, battle, war and kingdom were all lost. At times a handwriting expert is only a horseshoe nail, but often at times a final nail in the opposing party’s coffin. We should scoff at no nail, for it might nail us.

2001

1371. *Brown, et al. v Birman Managed Care, Inc., et al.*, 42 S.W.3d 62, 2001 Tenn. LEXIS 358 (TN 2001)

“Apart from the affidavits and depositions, Brown also relies on allegedly forged documents she claims were used to cover up the Secretary Scheme fraud.... Brown’s attorney hired Jane Eakes, a certified forensic examiner, to examine the signatures. Ms. Eakes’s opinion is that Ryan Masters signed Kathy’s name on both documents.”

COMMENTARY: Ms. Eakes is in NADE.

1372. *Rothstein v Orange Grove Ctr.*, 2000 Tenn. App. LEXIS 332 (TN Ct. App. 2000); remanded on issue of filial consortium, 60 S.W.3d 807, 2001 Tenn. LEXIS 808 (TN 2001)

“Mr. Storer was established to be an expert in the area of handwriting. His testimony could have substantially assisted the jury in determining what caused the apparent differences in the questioned medical record entries. The testimony was evidence that the questioned entries were made at another time than the entries directly preceding them in the record dated November 22. From that evidence the jury could have

permissibly inferred that the entries were made after Lisa's death to conceal a breach of the standard of care. See *Snyder*, 825 S.W.2d at 415.

"Mr. Storer's testimony may have brought into question when Dr. Prater made these entries. This testimony, however, is not impermissibly related to Dr. Prater's credibility. Rule 702 does not require that an expert be neutral. See Neil P. Cohen, Donald F. Paine, & Sarah Y. Sheppard, *Tennessee Law of Evidence*, §§ 7.02[3], 7-20 (2000). An expert's purpose is to provide an opinion about a disputed issue. The opinion will often vary from the opinion of other experts and may contradict factual testimony from other witnesses. See, e.g., *Edwards v. State*, 540 S.W.2d 641 (Tenn. 1976). [*12] Mr. Storer was not commenting upon Dr. Prater's truthfulness. Mr. Storer was testifying only as to his observation of the medical record and as to his expert conclusions based upon those observations. His testimony did not evaluate or comment upon Dr. Prater's credibility. See *Herbert v. Brazeale*, 902 S.W.2d 933, 937 (Tenn. Ct. App. 1995). The trial court, therefore, did not err in admitting Mr. Storer's testimony."

COMMENTARY: There is more discussion of Storer's testimony, which is worth the reading, particularly for experts in Tennessee. It sets forth the fine points of what forensic experts may or may not address in testimony. I suspect there is hardly a one of us who did not innocently say something that affected our testimony negatively because of some fine point of law. When it is said the expert is not required to be neutral, the Tennessee Supreme Court is not speaking about being an advocate or hireling for a party but being committed to presenting independent opinions objectively and steadfastly.

2011

1373. *Regions Bank v Bric Constructors, LLC, et al.*, No. M2010-01898-COA-R3-CV. (Court of Appeals of Tennessee, at Nashville. May 3, 2011 Session. Filed December 13, 2011)

The court of appeals quoted and accepted this opinion of the trial court: "[T]he testimony of Bric McIntosh, Patricia McIntosh's husband, that he did not sign the ten (10) questioned documents, is not credible. Instead, the Court credits the testimony of Regions Bank's forensic handwriting witness, Jane Eakes, who testified that, based on her analysis of Mr. McIntosh's subconscious handwriting habits, that in her opinion, Mr. McIntosh signed his wife's signature to eight (8) of the ten (10) questioned documents. The Court credits this testimony and finds it persuasive with regard to the issue of who signed at least eight (8) of the ten (10) questioned documents."

COMMENTARY: Eakes is a certified member of NADE and has served in various capacities on the Board of Directors.

Though the husband signed the wife's name on key documents in favor of the bank, the wife affirmed them because she knew of the effect of the key documents and did sign a later confirming document.

An issue needing to be resolved in the field of handwriting expertise is whether or

not the expert should examine exemplar writings from others than the one suspect the client is interested in. Here, Eakes identified husband as writer of the wife's signature and eliminated the wife as the writer, otherwise no other writer's exemplars were examined. I firmly believe that all reasonable suspects should be included in the examination and equally so as far as reasonably possible.

3. Tennessee Court of Criminal Appeals.

1996

1374. *Harris v State*, 947 SW 2d 156 (TN Ct. Crim. App. 1996); petition for *habeas corpus*, *Harris v Bell*, No. 3:97-cv-407. (US Dist. Ct. ED TN 2007)

In an appeal after denial of post-conviction relief, a major issue was whether defendant had received effective defense from his trial lawyer. The discussion is a bit complicated and involves the following two document examiners.

The State's document examiner, Thomas Vastrick, excluded three possible writers but only established "strong indications" that Harris had written a letter in question. Harris' former girlfriend identified the handwriting as his.

Previously defense counsel had contacted James Kelly, a handwriting expert with the Georgia Bureau of Investigation. His conclusion as to Harris having written the letter was as inconclusive as Vastrick's. Defense counsel was wary of consulting another expert lest he develop evidence helpful to the prosecution.

COMMENTARY: This case is a good example of balancing risk versus benefit for defense counsel's decisions in the midst of trial.

1375. *State v Bailey*, Court of Criminal Appeals, Tennessee, C.C.A. # 03C01-9501-CR-00004, January 11, 1996

Conviction for forgery was upheld.

Tennessee Rule of Evidence 702 seems to read the same as the Federal Rule 702. Defense counsel is quoted: "Your Honor, he [investigator Lawrence Smith] has specialized training in identification of similarities in handwriting, and, although he will not qualify as a handwriting expert, he will be of assistance to the jury in telling the jury what it is you look for in comparison of handwritings and in that regard he has done some investigation...." The Trial Court disagreed and did not let him testify, which was held upon appeal not to be error. Neither the State nor Defendant called a handwriting expert.

COMMENTARY: This case is included lest someone one day misrepresent it as ruling a handwriting expert was inadmissible. Defense counsel seemed to want a witness admitted to provide expert assistance in handwriting to the jury while she acknowledged that the witness was not qualified as an expert in handwriting. However, Saks and his kind are definitely not expert in handwriting, but they qualify precisely as non-experts. Defense counsel for Bailey thus might have done better in those Federal Courts which

unwittingly follow the rule that the better expert is the lesser expert who surpasses in presumptuousness.

2001

1376. *State v Livingston*, judgment of the criminal court affirmed, 2001 Tenn. Crim. App. LEXIS 573 (Tenn. Crim. App. 2001); dismissal of the petition for post-conviction relief affirmed, *Livingston v State*, 2005 Tenn. Crim. App. LEXIS 736 (Tenn. Crim App. 2005)

Defendant used photocopied prescriptions with the refill line filled in to obtain controlled substances.

“Evidently Tommy Reagan, a forensic handwriting expert, was retained by the petitioner, and from Mr. Reagan’s analysis and comparison of handwriting samples, he had concluded that it was ‘highly probable that [the prescriptions] were not signed by [the petitioner].’ The defense called Mr. Reagan as a witness at trial and was able to elicit his opinion that ‘the questioned documents were not signed by [the petitioner]. [*5]’ Immediately thereafter, the state objected that the petitioner had failed to provide the state with reciprocal discovery regarding Mr. Reagan, and the trial court refused to allow any further questioning by the defense.”

COMMENTARY: Whether or not he had signed the false prescription forms, he had still passed them. He could have easily had a friend sign them with the doctor’s name as he had his girl friend copy the forms he had used.

Around 1950 at Point Loma High School in San Diego, a friend of my brother’s had the same girl sign his mother’s name to notes excusing him from missing school when he played hooky. One day he was honestly absent and used the genuine note his mother gave him. The school nurse thought that one was a forgery, until she interviewed the mother who stated it was the only one she had signed. Like all forgers, his smugness of having gotten away with it led to the mistake that caught him in the net of his own deceptions.

1377. *State v Turner*, 2001 Tenn. Crim. App. LEXIS 419 (TN Crim. App. 2001)

Robert Muehlberger testified that writing on the murder victim’s stomach was by defendant. The defendant claimed it was error to permit this testimony since it was not disclosed before trial. He contended three things were wrong with the opinion itself:

- the victim was lying down, not standing, when the words were written,
- nor was the victim moving, and
- the writing was not smeared as if she had later worn clothes or touched someone.

Muehlberger’s reports had only stated that the handwriting on the victim’s body was defendant’s. It was not alleged that the omissions were intentional or that the expert was deliberately misleading in the defense’s pretrial interview of him. Further, the trial court permitted a delay of six days before Muehlberger was cross-examined. All this showed defendant was not prejudiced by the expert testimony.

COMMENTARY: It would enrich the literature of document examination to have cases like this written up with explanation how the work satisfied all requirements for scientific validity and technical reliability.

2003

1378. *State v Anthony*, 2003 Tenn. Crim. App. LEXIS 1108 (TN Crim App. 2003); appeal denied, 2004 Tenn. LEXIS 523 (TN 2004); post-conviction relief denied, *Anthony v State*, 2008 Tenn. Crim. App. LEXIS 226 (TN Crim. App. 24, 2008)

COMMENTARY: Thomas Vastrick, a forensic document examiner, testified.

1379. *State v Looper*, 118 SW 3d 386 (TN Ct. Crim. App. 2003)

COMMENTARY: Robert J. Muehlberger, “the manager of the forensic laboratory of the United States Postal Inspection Service and a forensic document examiner,” testified.

1380. *State v White*, 2003 Tenn. Crim. App. LEXIS 468 (TN Crim. App. 2003); appeal denied, 2003 Tenn. LEXIS 1086 (Tenn., Oct. 27, 2003); subsequent appeal, remanded, 2004 Tenn. Crim. App. LEXIS 958 (TN Crim. App. 2004)

“Tom Vastrick, a handwriting expert, testified that he examined handwriting on the envelope that contained the metal [*25] shavings. He said that he compared the handwriting with the defendant’s handwriting samples and that the handwriting on the envelope matched the defendant. On cross-examination, he said that he also analyzed a signature on an American National Insurance Company life insurance policy and that the signature matched the victim.”

COMMENTARY: In what seems a rather toxic decision, it was not error for the trial court to rule that defendant’s expert toxicologist could not testify to the toxicity of heavy metals in the blood, since he was not a medical doctor.

2005

1381. *State v Starnes*, No. M2004-02563-CCA-R3-CD (Ct. Cr. App. TN 2005)

“At the probation revocation hearing, Detective Gerald McShepard testified that he investigated the incident of stalking leading up to the arrest of the defendant. Detective McShepard indicated that the stalking victim gave him obscene letters she had received and that he turned them into the property room to be fingerprinted. Detective McShepard stated that the defendant's handwriting sample was obtained and submitted for comparative analysis. When asked by the State if Detective McShepard knew of the results of the handwriting analysis, the defense counsel objected on grounds of hearsay and lack of authentication. A discussion ensued, whereupon it was determined from the report that the defendant's writing sample had not been authenticated or confirmed. The

defense counsel also argued that the report was not a certified copy, and there was no evidence that Detective McShepard or the individual conducting the handwriting analysis was an expert in handwriting comparison. Consequently, the trial court sustained the defense counsel's objection to hearsay and lack of authentication.”

COMMENTARY: Defense counsel raised at least four objections, giving a good example of challenging from every reasonable direction possible. It seems at times that a trial attorney will try one attack and then give up. From what we can infer, this attorney also appears to have made each one to a specific fact with a specific point of law. I will presume to tell each of my attorney readers what Christ said to the lawyer who asked: “Who is my neighbor?” After relating the story of the Good Samaritan, Christ said: “Go you, and do likewise.” (*Luke* 10:37b)

2006

1382. *Davis v State*, No. W2004-02505-CCA-R3-PC (TN Ct. Cr. App. 2006)

Part of the complaint on appeal is that trial counsel was ineffective by not challenging Tom Vastrick, the prosecutor’s handwriting expert, and not calling one of his own. The almost universal reply to all such claims is given: “As a reviewing court, we will not second guess tactical choices made by trial counsel.” For not calling one’s own, appellant must offer evidence of what the expert would have offered and its likely effect on the jury. Finally, Petitioner could have presented handwriting expert testimony at the post-conviction review, but he did not.

COMMENTARY: The true ineffectiveness in this case was the attorney’s stated view, which, after he had researched the issue, was that handwriting expertise was hocus-pocus that the jury would not believe. Thus once more the critics and anti-expert experts had done a good job of propaganda and a bad service to defendants needing competent advice from a consulting handwriting expert.

1383. *State v Bryan*, 2003 Tenn. Crim. App. LEXIS 1088 (TN Cr. App. 2003); affirmed, *Bryan v State*, 2006 Tenn. Crim. App. LEXIS 592 (TN Cr. App. 2006); appeal denied, 2006 Tenn. LEXIS 1109 (TN 2006)

2006 Tenn. Crim App. LEXIS 592:

“Rosa Bryan [wife of Defendant’s brother Danny] discovered the notebook in December while she and her husband were staying in Defendant’s house after his arrest and gave it to Officer Thomas. At trial, Grant Sperry was qualified as an expert in forensic document examination. Based on the decipherable impressions and indented writings found in the notebook, Mr. Sperry was able to make out some of the words on a drawing that appeared to be a map including, among others, ‘Sam Ridley,’ ‘school,’ ‘shovel and rake,’ and ‘where dozer has cleared.’ Mr. Sperry compared the features and characteristics of the indented writings on the notebook’s remaining pages with known samples of Defendant’s handwriting. Based on this comparison, Mr. Sperry testified that

the indented [*9] writings in the notebook had been made by Defendant.”

COMMENTARY: Indented writing is made by original writing executed on one sheet of paper placed on top of another. If the pressure of the writing is sufficient, indentations are made into even four or more sheets of paper beneath the one being written on. Mr. Sperry would have had to demonstrate competence beyond merely being able to identify original handwriting, so this case is especially supportive of the objective ability of a qualified handwriting expert to give reliable testimony.

1384. *State v Davis*, conviction affirmed on direct appeal, 1997 Tenn. Crim. App. LEXIS 868, 1997 WL 576483 (Tenn. Crim. App. 1997); decision of post-conviction court affirmed, *Davis v State*, 2006 Tenn. Crim. App. LEXIS 65 (TN Crim. App. 2006); appeal denied, 2006 Tenn. LEXIS 500 (TN 2006)
2006 Tenn. Crim. App. LEXIS 65:

At [*3]: “Jenkins also testified on behalf of the defense. He claimed that defendant was not involved in the incident and insisted the shooting was carried out by Crutcher, himself and a man named ‘Butter.’

“On rebuttal, the state presented a letter written to Crutcher. In the letter, the writer asks Crutcher to assist, along with ‘Teddy Bear,’ in a plan to blame the shooting on a man named ‘Butter.’ A handwriting expert testified that the writing in the letter was consistent with that of the defendant’s.”

Defendant was convicted of first degree murder with a life sentence.

COMMENTARY: Once more we meet our old friend “consistent” which consistently implies that the writer of a questioned handwriting has been identified when nothing of the sort has occurred. Is a full stomach consistent with having eaten at the Ritz? Yes, as surely as it is consistent with having eaten at the local Salvation Army soup kitchen. Is it proof of having eaten at either or both places? Not at all. Much else is needed for proof of having eaten at any particular location. “Consistent” is consistently and illogically used by those who happily or errantly use illogic to infer falsehoods from inadequate forensic evidence. However, “consistent” at one time had a very specific technical meaning in handwriting expertise.

If the same writer wrote the same feature of handwriting in the same way, the two writings were consistent. If the same feature was not written in the same way by the same writer, it was a variation. If two writers wrote the same feature in the same way, it was a similarity. If two writers did not write the same feature in the same way, it was a difference. If there is a watershed moment in forensics when such very clear and concise terminology got thoroughly muddled, one can point to the *in limine* hearing in *U.S. vs. Starzecpyzel* when the anti-expert expert witnesses believed in their delusional expertise and were persuaded they knew what they were talking about. But we must also credit those alleged handwriting experts who knew enough basics to be accepted as such but lacked in-depth understanding of a broad knowledge of the multiple scientific aspects of the study of handwriting. Nevertheless, good reader, for your own understanding of the

historical context of what was once generally accepted, technical terminology, keep this little chart handy:

	Comparing two writings by same writer	Comparing two writings by two writers
Same feature written same way	A consistency	A similarity
Same feature not written same way	A variation	A difference

2008

1385. *Looper v State*, No. E2005-01918-CCA-R3-PC. (TN Ct. Crim. App. 2008)

“Robert J. Muehlberger, the manager of the forensic laboratory of the United States Postal Inspection Service and a forensic document examiner, testified that he had examined the signature ‘Anthony Looper’ on the original Gerhard Auto House form and on a quitclaim deed and two campaign financial disclosure statements bearing the signature ‘Byron A. Looper,’ as well as an appointment of political treasurer form also bearing the signature ‘Byron A. Looper.’ He testified that, in his opinion, the same person had signed each of these documents.”

COMMENTARY: See previous 2003 case, *State v Looper*, 118 SW 3d 386 (TN Ct. Crim. App. 2003), above, that might be a related prosecution or an earlier development in the same case.

1386. *State v Flannel*, 2008 Tenn. Crim. App. LEXIS 821

One argument on appeal was that the Trial Court erred in admitting Bartlett Police Captain David Cupp as an expert witness in handwriting. Cupp was properly qualified on the basis of his training and experience. “He testified that for the last eight years, he had conducted handwriting analysis for the Federal Bureau of Investigation (FBI), and the Secret Service, several law enforcement agencies in Tennessee, and several banks and lending institutions. Cupp also testified that he was a member of two professional associations: The National Association of Document Examiners and The National Association of Fraud Specialists. Cupp noted that these associations required twenty hours of credited courses and ongoing practice. Cupp acknowledged that he was unable [*39] to become certified by the American Board of Forensic Document Examiners because he lacked a college degree.”

COMMENTARY: Captain Cupp must have been confused on his background, since as of 2008 he was not a member of NADE, and available records indicate he had

never been. In a later 2009 case discussed below, *State v Williams*, 2009 Tenn. Crim. App. LEXIS 768 (TN Crim. App. 2009), Cupp seemed to have dropped a claim to NADE membership.

1387. *State v Stinnett*; judgment of the circuit court affirmed., 1998 Tenn. Crim. App. LEXIS 1025 (TN Crim. App. 1998); trial court's denial of petition for writ of error *coram nobis* affirmed, *Stinnett v State*, 2008 Tenn. Crim. App. LEXIS 736 (TN Crim. App. 2008)

COMMENTARY: Handwriting expert, Bob Muehlberger, testified at trial that defendant wrote three documents in question.

1388. *Ziyad v Estate of William B. Tanner, Sr.*, No. W2007-01683-COA-R3-CV, Court of Appeals of Tennessee, at Jackson (August 21, 2008)

Steven Slyter testified that a copied document could have a transferred signature and that the signature was characteristic of those by decedent prior in date to the document.

COMMENTARY: The document was found to be false. A handwriting trait that is purportedly seen in a writing of one time period but was only characteristic of another time period is called an anachronism. In imitated signatures of ill or older persons, this often occurs since the forger may only have older signatures to use as models.

2009

1389. *State v Brown*, 2009 Tenn. Crim. App. LEXIS 301 (Tenn. Ct. Crim. App. 2009)

"Thomas Vastrick, a forensic document examiner, testified that he took handwriting [*28] samples from the defendant, which involved the defendant writing the same words and phrases three times. Vastrick then compared the defendant's handwriting samples to both the handwriting on the note obtained from Bryant and the handwriting on the 'new personality profile' found in the defendant's motel room. Vastrick testified that he 'was able to determine that the questioned writings' in both the note from the jail cell and the new personality profile were written by the defendant. On cross-examination, Vastrick said that the defendant appeared to be writing 'naturally' while giving her handwriting samples and did not appear to 'fake her handwriting' while giving the samples."

The "new personality profile" was relevant because it tended to prove premeditation and plan to escape prosecution for the murder. The compelled handwriting samples did not violate any constitutional privilege.

COMMENTARY: One would wish that the case report would have explained why the writing of the same words and phrases three times. Usually it is to vary speed or obtain opposite hand samples or various disguises such as use of a different slant.

1390. *State v Williams*, 2009 Tenn. Crim. App. LEXIS 768 (TN Crim. App. 2009)

“Captain David Cupp with the Bartlett Police Department was accepted by the court as an expert in handwriting analysis. Captain Cupp compared the enclosure letter sent to Sergeant Curran with six to eight documents written by the defendant and was ‘one hundred percent sure’ the enclosure letter was written [*16] by the defendant. Captain Cupp said that when doing a comparison, he looked for eleven indications with each letter in each word. In examining the known writings of the defendant, Captain Cupp made a list of fourteen things unique about the defendant’s handwriting and then noted those traits in the questioned document.”

There is extensive discussion regarding Cupp’s admissibility, beginning at [*21] with the defense’s contentions: “The defendant argues that the trial court erred in allowing Captain David Cupp to testify as a handwriting expert. He asserts that Captain Cupp’s testimony did not meet the criteria set out in *McDaniel v. CSX Transportation, Inc.*, 955 S.W.2d 257 (Tenn. 1997), to qualify as an expert because he was not familiar with the history of handwriting analysis, not familiar with any scientific studies, his work was not subject to peer review, he did not know the potential rate of error of handwriting analysis, there was no testimony that handwriting analysis was generally accepted in the scientific community, and his research was done for the purpose of litigation.”

Later the criteria given in *McDaniel* are listed as something the trial court “may” employ. They are the *Daubert* criteria.

Cupp testified to his membership in professional associations, this time omitting National Association of Document Examiners. See Item 809 above, *State v Flannel*, 2008 Tenn. Crim. App. LEXIS 821. For this case, “[H]e belonged to the Association of Certified Fraud Specialists and the National Association of Fraud Examiners. Captain Cupp explained that he had to be re-certified every year through the organizations, which involved sending in his hours and number of cases worked.”

COMMENTARY: Cupp’s methodology and terminology appear to be unique versus being what is standard in the field of document examination. His training was the Secret Service two-week course and some work with another document examiner for a year. His certifications hardly seem challenging or much related to his “expertise.” This case should give heart to the lesser lights in our profession and sorrow to the rest of us.

2010

1391. *State v Schlieff*, No. E2008-02147-CCA-R3-CD. (TN Ct. Crim. App. 2010)

This appeal affirmed conviction for rape of a child.

“The State rested, and the defense called Roy Cooper, a forensic document examiner, who testified on behalf of the defendant that he could say with 90 percent certainty that H.R. had written the document that said the defendant did not rape her. During cross-examination, Mr. Cooper acknowledged that he had no personal knowledge whether the ‘known’ writing samples provided to him by the defense were actually

written by H.R.”

COMMENTARY: Naturally Cooper would have no personal knowledge of the exemplars. If he had, he would have been a percipient witness, while the client and client’s attorney have the obligation to prove the authenticity of the exemplars to the satisfaction of the judge. I have several times strongly asserted these points when asked such a misleading and falsely suggestive question.

2011

1392. *State v Roberts*, No. W2010-01538-CCA-R3-CD (TN Ct. Crim. App. 2011)

“Thomas Vastrick, who was accepted by the court as an expert in the field of forensic document examination, testified on the defendant's behalf that he had compared the signatures in exhibits three and four to known specimens of the defendant's signature and found differences indicating that they were not in the defendant's handwriting. On cross-examination, he acknowledged that the defendant's signature was complex, which made it theoretically harder to duplicate, and that it was therefore possible that the signatures in exhibits three and four were the defendant's.”

The registrar of voters at the precinct where Defendant was accused and convicted of voting when he had a felony conviction was asked to tell the jury what similarities she saw between Defendant’s exemplar signature and the one he was accused of writing in order to vote illegally. An objection to improper opinion testimony was sustained, but other curative measures were never requested.

COMMENTARY: When opposing counsel obtains an admission from your expert that something contrary to the expert’s opinion is possible, crush the basis for a later argument that the contrary was established. Short of a definite opinion, the expert leaves at least some slight possibility of the contrary. However, hammer away at the fact that the expert more compellingly established a solid probability that favored your position. Indeed, in and of itself “possibility” implies no “probability.” Further, if it is said there is a 60% probability an event occurred, that does not mean there is a 40% probability it did not occur. Only positive evidence favoring the non-occurrence could establish its probability.

This is also an excellent case to contrast effective actions by counsel attributed to professional action by counsel and ineffective actions by counsel attributed to personal actions by the defendant. The appeal included claim of ineffective assistance of counsel. This claim was overruled because Defendant several times was said to have failed to do something to preserve the issue for appeal. I guess on those several occasions trial counsel was out on a coffee break, and so Defendant had to take over his own representation. After Defendant himself gave himself ineffective assistance, his very effective trial counsel came back from his coffee break.

1393. *Thomas v State*, No. W2008-01941-CCA-R3-PD (TN Ct. Crim. App. 2011)

Thomas was denied post conviction review. In the underlying trial Marty Pearce had testified as his document examiner. There was no opposing expert testimony, though there was on the same issue in a Federal trial. See *Thomas v U.S.*, Nos. 2:03-cv-02416-JPM-TMP, 2:98-cr-20100-01-JPM (U.S. DC W.D. TN 2015).

COMMENTARY: A case of routine admissibility, which, when compared to the Federal case cited above, suggests that routine ought not always be so routine.

2012

1394. *State v Cooper*, No. E2011-00590-CCA-R3-CD. (TN Ct. Crim. App. 2012)

“The defense utilized the testimony of handwriting expert Dr. Larry Miller from East Tennessee State University. He reviewed all of the checks that were cashed and opined that Mr. Taylor had signed all of the checks. Dr. Miller noted that some of the checks had been altered or changed after they were initially written. Dr. Miller testified that the changes on some of the checks were consistent with Mr. Taylor’s handwriting.”

COMMENTARY: Dr. Miller is a certified member of NADE and has served as Education Chair. He heads the forensic department at ETSU which offers a graduate certificate in document examination. I believe he is also certified by BFDE.

2013

1395. *State v Powell*, No. W2011-02685-CCA-R3-CD (TN Ct. Crim. App. 2013)

“Grant Sperry, a forensic document examiner, was qualified by the trial court as an expert in the field of forensic document examination. Mr. Sperry examined documents submitted to him for comparison. He reviewed the signatures from a collection of documents prepared during the normal course of business, and he reviewed the signature on the order dismissing case 7424. Mr. Sperry explained that individuals develop ‘a series of habits through repetition’ and that ‘[handwriting] habits are unique to each individual. So no two individuals have ever been found to have[,] even with some of the studies that have been done on quintuplets and so forth over the years, have the same identical set of handwriting features and characteristics.’ He also testified that ‘no two writings by the same individual will ever be precisely alike.’

“Mr. Sperry testified that ‘accidentals’ occur in handwriting when a person is writing, for example, in a moving car. He explained that the writing may contain ‘features and characteristics . . . that may never be repeated. It doesn’t mean that the signature doesn’t have value for identification.’ Prior to his examination of the documents in this case, Mr. Sperry was informed that Defendant had signed the order against a wall. Mr. Sperry testified that the ‘features’ of that signature ‘were not replicated’ in the submitted samples. He examined the signature microscopically, and he determined that the signature in question was illegible, and he described it as ‘a stylized signature, an abbreviated signature, kind of like a credit card signature, which many of us write.’ He

testified that the signature was ‘naturally executed’ and there were no ‘hard stops that would be indicative of either a simulation, . . . , or a tracing,’ Mr. Sperry concluded that Defendant wrote the signature on the order. He testified that it was ‘much more likely than not, that [Defendant] made that particular signature.’ He testified, ‘my conclusion is that there are indications that [Defendant], whose writings are reflected in [the submitted documents], wrote the . . . signature on [the order]. It is a less than definitive finding.’ He further testified that he did not find indications that Defendant did not write the signature and that ‘the features and characteristics that perhaps in this case are not represented fully, I believe is due to simply some sort of accidental feature that was incorporated, writing position, writing situation, I don’t know.’ Mr. Sperry testified that, in his opinion, the likelihood that Defendant wrote the signature was ‘approximately 80 percent[.]’ On cross-examination, Mr. Sperry testified that Defendant ‘has a very wide range of writing variation’ and that ‘it certainly is possible for an individual to recognize his signature and [to] not [be] able to recognize their signature.’”

COMMENTARY: I believe the expert witness must be required to put flesh and feathers on this bird before it is believed capable of flying. Here are a few possible enquiries a cross-examiner might make:

1. “Individuals develop a series of habits through repetition and that handwriting habits are unique to each individual.”

Q. List the specific handwriting habits you determined this writer has. [Whatever the answer, require a count of all occurrences in accordance with the alleged habit compared to the count for other occurrences, and also make the witness satisfy legal requirements for proving a custom or habit.]

2. “No two writings by the same individual will ever be precisely alike.”

Q. Define precisely what you mean by “precisely alike.” [In the classical writers such as Albert S. Osborn it only means the likeness that a tracing will create. Also, the witness makes an assumption that this writer lacks such resemblance in different genuine writings, a thing that must be proven if relevant to the expert’s opinion.]

3. The entire discussion of “accidentals” is rife with assumptions and takes for granted factual matters that form the basis for the opinion. Everything thus dismissed as evidence must be shown to fit a proven protocol for determining a given feature as an accidental versus a mere inconvenience for the expert opinion.

4. “Features of the disputed signature were not replicated in the submitted samples.”

Since these become significant differences, the witness must be made to explain why they are dismissed apparently as being caused by writing on a wall, backing it up with professional publications showing what writing in other than a normal position will cause.

5. “The signature was naturally executed and there were no hard stops that would be indicative of either a simulation or a tracing.”

Somehow handwriting experts came to think that indicia of false writings are

required traits for a false writing to be false, which is incorrect since some people write that way normally. On the logic the witness used you can imitate or trace someone's signature and it is genuine if you become skilled enough not to leave any "hard stops."

6. He did not find indications that Defendant did not write the signature.

However, all the features he says he did not find are such indications if not outright evidence of falsity. He must be made to list every single trait from the samples he says he did not find in the questioned signature and vice versa.

7. Then comes the statement that should have gotten his testimony stricken: "The features and characteristics that perhaps in this case are not represented fully, I believe is due to simply some sort of accidental feature that was incorporated, writing position, writing situation, I don't know."

He is required to provide a reasonable explanation for every such difference or he cannot reasonably conclude to genuineness. That "I don't know" shows lack of the very thing an expert must have above all others, expert knowledge needed to resolve the fact at issue versus leaving it hanging in the air as it was left hanging in this case.

8. Lastly, the terms used to express the assurance of his opinion are outside the generally accepted usage and nullified by the absence of specific factual and technical bases for the opinion.

1396. *State v Coleman*, No. E2013-01208-CCA-R3-CD (Ct. Cr. App. TN 22014)

"In her first trial, Defendant was acquitted of all charges alleging the murder, kidnaping, and rape of victim C.N. She was convicted of several counts of the lesser-included offense of facilitation of charges alleging the murder, kidnaping, and rape of victim C.C. Defendant was granted a new trial by the trial court based upon structural error in the proceedings of the first trial."

It seems to me she had a worse outcome on her second trial, but it would be interesting to know how a criminal defense attorney or prosecutor would view it. On her second trial it is noted: "Dr. Larry Miller, a forensic document examiner, testified that he compared handwriting by Defendant to handwriting in a journal recovered following Defendant's arrest, and he concluded that the handwriting matched." The journal had entries that the court ruled could be interpreted by the jury as evidence of Coleman's conviction of 12 acts of facilitating various crimes by others..

COMMENTARY: Dr. Miller is a certified member of NADE and heads forensic studies at East Tennessee State University. At NADE's 2015 conference in Nashville he presented an all-day survey and technical explanation of major instrumentation used in document examination. Some of his student also participated in presentations and did ETSU proud. Jim Lee of Foster and Freeman graciously gave his time and talent to assist Dr. Miller.

2015

1397. *State v Willis*, No. E2012-01313-CCA-R3-DD (Ct. Crim. App. TN 2015); affirmed (TN 2016)

COMMENTARY: Dr. Larry Miller testified as a handwriting expert for the prosecution.

3. Tennessee Supreme Court.

2010

1398. *Richardson v James Brown Contracting, Inc.*, No. E2009-01785-WC-R9-WC (TN 2010)

“Roy Cooper, Jr., a forensic document examiner, testified as an expert on behalf of JBT. Cooper stated with eighty-five percent certainty that the signatures on the addenda were not Richardson’s. Cooper also compared the signature on the addenda to the writing sample of Teresa Richardson and opined that he was eighty-five to ninety-five percent certain that she was the signer. Cooper explained that he could not assess the signatures on the addenda with one-hundred percent accuracy because the original copies of the documents were not available.”

The addenda were added to the original employment contracts for truck owner/operators to remove them from coverage by worker compensation. Richardson had elected the coverage under condition he pay for it, and the court said that prevailed. His wife had no authority to sign for him, so it was inconsequential whether or not her signatures on the addenda were genuine.

COMMENTARY: This is another case where a party’s own expert’s testimony helped establish the case for the opposing party. The use of percentages to express opinions in handwriting comparative examinations is a very big no-no, since if challenged the expert most likely will not be able to support it with mathematical data statistically analyzed. It is time that we be required to move into that area of evaluating our evidence, of however limited value it might prove to be. We would need to avoid the fallacy that there are no reliable truths other than mathematical truths. There is no mathematically reliable evidence that only mathematical evidence is reliable. Likewise, there is no mathematical proof that only mathematical proof is probative. I dare anyone to follow the most mathematical of mathematicians around all day and ask of every assertion made what is the mathematical proof of it. If you are tempted to do so, do have your life insurance paid up.

QQ. TEXAS CASES.

1. Texas Trial Courts.

1997

1399. *Estate of Edward Rollen Smith*, Deceased, No. 95-2020-P2(A). (Dallas County, TX, Probate Court No. 2, 1997)

After a protracted *in limine* challenge, the judge stated simply:

“Gentlemen:

“Linda L. Collins will be recognized as an expert. George W. Chaney will be recognized as an expert.”

COMMENTARY: Ms. Collins subsequently changed her name to Linda C. James. Ms. James consulted me on this case and so started me on the research that ultimately led to the text you are reading.

1400. *Jones vs. Hester*, Denton County, TX, 1997.

Under *DuPont/Daubert* guidelines, The Honorable Donald R. Windle ruled that handwriting expert Matley "meets the standards for scientific endeavor." His Honor also ruled Linda James satisfied *du Pont/Daubert* standards for reliability and admissibility of expert testimony.

COMMENTARY: In *E. I. duPont de Nemours & Co., Inc., v Robinson*, reversing *Robinson v E.I. duPont de Nemours*, 888 S.W.2d 490 (Ct. App. TX Fort Worth 1994); 923 S.W.2d 549 (TX 1995), the Supreme Court of Texas adopted the Federal Supreme Court case of *Daubert* as ruling in Texas.

2001

1401. *State v Baggett*, No. 219-80845-95 (Discharge of probation, TX 219th Judicial District Court 2001)

Conviction was entered in 1995 and five years probation given. Conviction was for felony offense of Theft Over \$1500.

COMMENTARY: This does not involve any opinion as a document examiner, but, during the active period of holding oneself out as one, this felony conviction was sustained.

2008

1402. *Dershem and Dershem vs. Capital One Services, Inc.*, No. 05-09659-F (116th Judicial District, Dallas County, TX 2008)

Defendant deposed Plaintiffs' handwriting expert, Curtis Baggett. Afterwards,

Plaintiffs' attorney made motion to court to disqualify Baggett and permit the retaining of another expert. Court granted the motion provided Plaintiffs reimbursed Defendant for costs of deposing Baggett.

COMMENTARY: I have the above on information and belief.

2010

1403. *State v Caceres*, Cause No. CR-0002-10-D. (Texas District Court of Hidalgo County 2010)

Prosecutor moved to exclude defense document examiner, Kay Micklitz, because she did not have the laboratory accreditation required under Texas Code of Criminal Procedure Art. 38.35. Court ruled the provision unconstitutional since it denied defendant access to an examiner, there being only two law enforcement labs covering document examination in Texas with the accreditation. In a subsequent hearing, the judge said the provision might also intrude upon the court's gatekeeper role since it predetermined an expert's admissibility, but that had not yet been argued by a defense attorney.

COMMENTARY: Ms. Micklitz, now retired, was a diplomate member of NADE. A brief survey of Texas cases regarding Art. 38.35 involved defense objection to prosecutorial experts from labs without the accreditation. Universally there was always some reason why the prosecutorial expert need not conform to the rule. This fits with the seeming unwritten rule that rules in criminal trials bind defendants strictly and prosecutors only if they are in conformity already, otherwise there is some good excuse for being excused from a rule that states no excuses for nonconformity. You may not infer from this that I have a single cynical sinew in my body.

2012

1404. *Bat World Sanctuary, et al., v Cummins*, Trial Court Cause No. 352-248169-10; Court of Appeals No. 02-12-0285-CV. (Trial: District Court, Tarrant County, TX, 2012.)

COMMENTARY: Linda James testified for Bat World Sanctuary, Inc., regarding the genuineness of defendant's signature on a document.

2014

1405. *In Re: a Purported Lien or Claim Against Helvetia Asset Recovery, Inc.*, Cause No. 2013-CI-18394 (District Court, Bexar County, Texas, 224th Judicial District 2014)

"On March 3 and 4, 2014 came to be heard the First Amended Motion for Sanctions filed by Movants Puerto Verde, Ltd. ('Puerto Verde') and Helvetia Asset Recovery, Inc. (collectively, 'Helvetia') against Respondents Burton Kahn ('Mr. Kahn') and his attorney L. Terry George ('Mr. George') (the 'Sanctions Motion'). Mr. Kahn represented himself pro se at this evidentiary hearing. Mr. George did not appear."

Kahn submitted a report by Curtis Baggett to support his contention that a company official's signature had been forged although the official had testified that he had signed. Baggett's questionable credential's and history of being critically evaluated and disqualified by courts was readily available with due diligence. Sanctions were imposed:

"Sanctions be and hereby are awarded against Burton Kahn and Terry George, jointly and severally, in the amount of \$253,416.00, for which let execution issue. Of this sum, the Court finds \$153,416.00 to be reasonable attorneys' fees incurred by Movants as a direct and proximate result of the fictitious filings and the attempted withdrawal of the Rule 11 agreement. The remaining \$100,000.00 is imposed as sanctions for lack of diligence into the facts and the law."

COMMENTARY: The Final Judgment and Order of Sanctions is a nice encapsulation of Baggett's alleged expertise. Central passages from two reports by him are given so as to show they differ only in the names of the writers in two different cases whose signatures Baggett claimed were forged.

2. Texas Courts of Appeal.

1993

1406. *Stokes v State*, 853 SW2 227 (Ct Ap TX Tyler 1993)

At page 239: "Dale Stobaugh, a forensic document examiner for the D.P.S. crime lab at Austin, Texas, compared several writings seized from the crime scenes with known handwriting samples taken from each defendant." He was able to "definitely establish" one exhibit was written by one defendant. No challenge to admissibility is reported.

COMMENTARY: This is offered as a case supporting admissibility from a state following the same rules as Federal courts. One could reasonably argue that lack of a challenge means the opposing side saw no viable challenge. The fact of modern admissibility certainly supports, rather than takes away from, reliability.

1994

1407. *Lyon v State*, 885 SW 2d 506 (TX Ct. App. 8 Dist. 1994)

At page 514: "Marvin Morgan testified he was a questioned document examiner from the Bexar County Forensic Science Center in San Antonio. He utilized known examples of the victim's handwriting in examining thirty-seven questioned documents." He found them all to have been written by the victim, though he did not examine defendant's handwriting.

At page 515: "On rebuttal, the State utilized the testimony of Hartford R. Kittel, a document examiner. He examined a collection of writings attributed to Nancy Lyon, which he compared to some of her known writings. He also compared the purported

writings to Appellant's known writings. The witness examined the writing that indicated 'fear of Bill.' He stated that most of the writing was the victim's but that some of the writing belonged to Appellant." The latter seemed to be all descriptions of sexual abuse by Bill, her brother and her sister.

After conviction, defense claimed newly discovered evidence that comprised more documents. "The trial attorney sent these documents to Marvin Morgan and to Steven Cain, another handwriting expert. Al Leightner, an ink examiner, was also consulted. Both experts testified that given this *518 additional material, they could refute Kittel's conclusions." However, since the documents were in possession of defense prior to trial, there was no due diligence and thus no newly discovered evidence.

COMMENTARY: "Al Leightner" may be a mistype for "Al Lyter."

I realize there must be firm rules concerning newly discovered evidence to support motions for reconsideration and appeals. However, where there is a reasonable probability, as in *Lyon v State*, that an innocent defendant has been convicted, I assert that we must create a special exception and require a proper investigation. Technicalities are to serve humans, not tyrannize them.

1996

1408. *Evans v May*, 923 S.W.2d 712 (Ct. App. TX 1 Dist. 1996)

Evans contended that the will had been revoked by decedent since he had mutilated it. However, it was found taped back together. Additionally, his handwritten notations were added by him in the margins.

At pages 713-714: "The parties stipulated to the authenticity of the decedent's signature on page two of the will and in the margin of each page of the will. At trial, the attorney who prepared the will and a handwriting expert testified that the handwriting on the side of each page of the will was that of the decedent. By admitting the will to probate, the probate court determined that the handwriting was not a forgery and the handwriting did not constitute a codicil to the will."

COMMENTARY: There were other issues raised on appeal, but the one of interest to this compilation is the claim that a letter was omitted from a witness' name. The justices noted they had a copy of the will before them and noticed no such missing letter.

1998

1409. *Vasquez v State*, 975 SW2 415 (Ct Ap TX Austin 1998)

Conviction for sexual assault on child was affirmed. Expert testimony on witness' truthfulness and on statement analysis were admissible only on rebuttal of contrary attacks by defense. Linguistics or stylistics is here called "statement validity assessment" or "analysis." At page 418: "Specific testimony that statement validity analysis indicates that the person's statement is in fact an account of real events is usually inadmissible, and

may be adduced only to rebut specific testimony that such analysis indicates that the statement is not an account of real events.” Also at page 418: “He [the expert] also noted that the complainant ‘tells about something that didn’t happen,’ which is another characteristic of statements that are not fabricated.”

COMMENTARY: First a puzzlement regarding the last item: So a fabricated story only tells of what did in fact happen? Or to ask it in another way: A statement that is not fabricated contains fabrications? This kind of amazing insight seems typical of this kind of expertise which is a perversion of standard linguistics rather than a valid branch of it.. This case ought never be used against handwriting identification though it has been, since the latter never purports to offer independent proof of the truthfulness of statements. The most famous course text on this dubious skill, *The L.S.I. SCAN workshop guidebook; scientific content analysis (SCAN)*, by Avinoam Sapir, contains within the chapter on determining truth in statements every single trait that the author asserts is a sign of a false statement.

1999

1410. *Brown v State*, 1999 Tex. App. LEXIS 805 (Ap Dallas TX 1999)

One paragraph is devoted to consideration of defense expert witness. At [*22-23]: “In his twelfth point of error, Brown contends that the trial court erred in overruling his objection to the prosecutor’s argument during the guilt or innocence phase of the trial in which he called defense witness Curtis Baggett a ‘charlatan.’ Baggett testified that he was a psychologist, hypnotherapist, psychotherapist, and graphologist, and that he had been designated by the court as an expert witness in this case. The court noted that Baggett had not been properly qualified as an expert, and Baggett retracted his testimony that the court had designated him as an expert in this case. Baggett testified that he is not licensed as a psychologist or a psychotherapist and has not practiced therapy full-time for fifteen years, although he still conducts occasional weight loss and stress management seminars. Baggett works primarily in real estate and financial planning. A ‘charlatan’ is defined as ‘a pretender to medical knowledge: a quack.’ Webster’s Third New International Dictionary 378 (1993). We conclude that the prosecutor’s argument that Baggett was a charlatan was proper as a reasonable deduction from the evidence. *See Broussard v. State*, 910 S. W.2d 952, 959 (Tex. Crim. Ann. 1995), *cert. denied*, 519 U.S. 826.117 S. Ct. 87.136 L. Ed. 2d 44 1996).”

COMMENTARY: This writer would offer no defense of Mr. Baggett. Presumably the Trial Court permitted him to testify. Although he was called for his purported expertise in psychology, the case is included since he appears so ubiquitously for his purported expertise in document examination.

1411. *Diggs v State*, 1999 Tex. App. LEXIS 3380 (Ap Austin TX 1999)

Conviction for passing bad check is affirmed. Lillian Hutchinson, as defendant’s

handwriting expert, testified he had not written the check, while Randy Rubio as the prosecution expert said he had. The Trial Court could have believed Rubio over Hutchinson.

COMMENTARY: Online report from “SUN 08/23/1992 HOUSTON CHRONICLE, Section Lifestyle, Page 2, 2 STAR Edition” stated that Hutchinson taught at 1992 International Congress and Resident Institute of Graphoanalysis in Chicago. An alternative spelling seems to be Hutchison.

1412. *Duggan v Marshall, et al.*, 7 S.W.3d 888, 1999 Tex. App. LEXIS 9465 (Ap Houston TX 1999)

Duggan claimed she had received a Tax Resale Certificate from Marshall Petroleum, but her handwriting expert testified that the signature was not Marshall's. Other evidence supported that opinion.

COMMENTARY: This case reminds the attorney to be sure of the opinion one's expert has arrived at.

1413. *Gaynier v Ginsberg, et al.*, 1999 Tex. App. LEXIS 2376 (Ap Dallas TX 1999)

In a case originally filed in November 1981, summary judgment for defendants is affirmed. At trial several handwriting experts testified for Gaynier that her deceased husband's signature on a deed in dispute was not authentic.

COMMENTARY: No other information is given regarding expert handwriting evidence.

1414. *Gulley v State*, 1999 Tex. App. LEXIS 8205 (TX Ct Ap 1999)

It was not abuse of discretion to disallow testimony of defense's proffered handwriting expert. “Although it could be conceded from the record that the underlying science of handwriting analysis was a valid science, the remaining six factors illuminated in *Kelly* were conspicuously absent.”

COMMENTARY: Once an expert has been notified there might well be trial testimony, the expert should systematically review all factors on admissibility to be sure each is covered or, if not applicable in the particular situation, prepare a clear explanation why it is not applicable and what alternative reasonable factor would be applicable. Experts should obtain copies of statutes, rules and court cases that control the kind of testimony they will be likely to give in particular jurisdictions. In any case, one ought to inquire of the attorney calling one as an expert what requirements precisely must be satisfied and how. From personal knowledge I know that in this case the witness had prepared questions to bring out a full explication of the reliability in accordance with Texas *Kelly* and *du Pont* cases, but the defense attorney asked for none of it.

The citation for the *du Pont* case is *E.I. du Pont de Nemours & Co., Inc., v Robinson*, 923 S.W.2d 549 (Sup Ct Tex. 1995). That for the *Kelley* case is *Kelly v State*, 792 S.W.2d 579 (Ct App. Tex. Fort Worth 1990); affirmed, 824 S.W.2d 568 (Ct Cr App.

Tex. 1992). I believe the *Kelly* case sets forth far more clearly and cleanly what the U.S. Supreme Court struggled so clumsily to accomplish in its *Daubert* decision. The outstanding virtue of *Daubert* over *Kelly* is the former's verbosity. As usual, wordiness revealed, rather than dispelled, the writers' own perplexity, a perplexity that became law by precedence. Thus came the expenditure of time, talent and treasure on trying to sort it out. Would that the Federal Supreme Court had had the intelligence and modesty simply to adopt the *Kelly* decision from the Texas Court of Criminal Appeals.

1415. *In re the Estate of Orville Peter Livingston; Livingston v Nacim*, 999 SW2 874, 1999 Tex. App. LEXIS 6718 (Ap El Paso TX 1999)

Livingston brought action to probate an earlier will while his sister, Nacim, sought to have a later will probated. She prevailed and he appealed. The Trial Court ordered both parties to deposit \$1500 so that the Court could select a qualified document examiner to report on decedent's signature on the later will. Nacim alleged that Livingston had not deposited his \$1500 but had consulted Al Keon, a handwriting expert, who determined the signature in question was authentic. Remarks by Livingston's counsel to the Court about consulting Keon and the lack of objection to the Court's considering Keon's deposition and report in effect waived any error in the issue.

COMMENTARY: Though apparently Keon did not testify before the Trial Court, his deposition testimony and report were relied on by the Court without objection by either party. For that reason I include this case citation as supportive of admissibility of expert handwriting evidence in courts of law. The correct spelling of the expert's name is "Keown." I believe him to be a member of AFDE.

2000

1416. *Ates v State*, 21 S.W.3d 384, 2000 Tex. App. LEXIS 866 (Ap Tyler TX 2000)

COMMENTARY: "Denise Jarrett, a handwriting expert, testified that in her opinion State's Exhibit 130 was written by Appellant." Conviction for murder was affirmed.

1417. *Bellah v State*, 2000 Tex. App. LEXIS 2876 (Ap Dallas TX 2000)

COMMENTARY: Handwriting expert Crawford testified without objection and his reports were admitted without objection, and so admission of the evidence was harmless.

1418. *Dial v State*, 2000 Tex. App. LEXIS 872 (Ap Dallas TX 2000)

COMMENTARY: Failure by defense counsel not to call handwriting and footprint experts was not deficient performance since the State did not contend either handwriting or footprints in question were Defendant's.

1419. *Lopez v Sepulveda*, 2000 Tex. App. LEXIS 6362 (Ap Dallas TX 2000)

COMMENTARY: Appellant Lopez, in an election contest, presented expert handwriting evidence. All issues were decided against him.

1420. *Martinez v State*, 2000 TX App. LEXIS 6542 (Ap Houston TX 2000)

COMMENTARY: Alleged child victims of molestation purportedly wrote letters saying the accusations were lies. “Both the State and the defense put on evidence from handwriting experts.” The appeal claimed it was error when the judge refused to admit a chart by the defense expert, Ms. Shipper, because it had notations made by her and not the alleged victims. This complaint had not been preserved for appeal.

1421. *Morales v State*, 11 S.W.3d 460, 2000 Tex. App. LEXIS 1132 (Ap El Paso TX 2000)

Defendant’s conviction for forgery and tampering with a government record was affirmed. Allan Keown, a handwriting expert, identified Morales’ campaign manager as one who wrote several names on a petition for candidacy for Constable. Numerous voters testified that they had not signed the petition nor given anyone permission to sign for them.

COMMENTARY: The advantage of forging the names of deceased citizens to candidacy petitions is that none of the signatories can give live testimony against one.

1422. *Parmer v State*, 38 S.W.3d 661, 2000 Tex. App. LEXIS 8013 (Ap Austin TX 2000)

COMMENTARY: Complainant in a prosecution for aggravated sexual assault found a threatening note in her car. At trial a handwriting expert testified that defendant had written it.

1423. *Rosemon v State*, 2000 Tex. App. LEXIS 414 (Ap Houston TX 2000)

Conviction of “state jail felony offense of forgery” is affirmed. Appellant claimed the prosecutor failed to disclose exculpatory evidence by not revealing the results of a handwriting comparison after she had given requested exemplars. The prosecutor said he had orally informed defense counsel the results were “inconclusive, not exculpatory.” Defense called Milton Ojeman, document examiner with Harris County D.A., who testified that, when comparing a known to questioned writing: “Those results are positive identification, highly probable, probable, inconclusive, and positive elimination. When comparing appellant’s exemplars to the alleged forgery, Ojeman’s comparison was inconclusive.” Appellant’s claim that the late disclosure prevented her from obtaining her own independent handwriting examiner was not supported by the appellate record.

COMMENTARY: This has the virtue that the Court received testimony about the multiple step level of probability terminology in handwriting opinions, here reduced to five with “indications are” left out.

1424. *Stringfellow v State*, 2000 Tex. App. LEXIS 2613 (Ap Dallas TX 2000)

A store owner, her employee and son identified appellant/defendant in a photo lineup and at trial as one who came in with defendant's daughter, shopped and passed a bad check, using ID with name of person from whom checks had been stolen. The son wrote the car license down and gave it to police, and the employee had called the woman whose name was on the check and then called police. At trial, defendant's handwriting expert, Gene Hollis, testified that defendant had not written the check in question.

COMMENTARY: It was for the fact-finder to resolve conflicting evidence.

1425. *Villanueva v State*, 2000 Tex. App. LEXIS 6213 (Ap Austin TX 2000)

COMMENTARY: A handwriting expert testified that had endorsed a bad check.

2001

1426. *Green v State*, 55 S.W.3d 633, 2001 Tex App. LEXIS 1112 (Ct App. Tyler Tex. 2001)

Affirming conviction and life imprisonment for capital murder.

"False confession expertise" properly excluded. Expert claimed "statement analysis" could show jury that Defendant's confession was a false statement. Although the expert claimed great authority and literature in the appropriate discipline, none was cited specifically, photocopied pages were not identified, and he never said he relied on the ones he did name.

At page 638: "[T]he trial court ruled the evidence inadmissible because (1) there was no case law recognizing such expert testimony, (2) Allen had never testified in this area before, (3) there was 'no dedicated certification process for this confession process,' and (4) there were 'no periodicals dedicated to the process.' The trial court further found Allen's opinion to be subjective and 'not readily re-produceable [sic].' The trial court held that the issue was one of credibility couched in psychiatric or pseudo-psychiatric terms."

At page 641: "The documents appear to be photocopies of pages of some textbook or treatise, but no author, title of publication, or date of publication is provided in the record. Furthermore, there was no indication that Allen had relied upon or unutilized the research or techniques described...."

Defendant's wife at time of murders and an investigator lied under oath as prosecution witnesses that they had no sexual affair together. Prosecutor knew the testimony was false. Since it was brought out in defense case in chief it seems the perjury and subornation of perjury was quite okay with both trial and appeal courts. A no-harm-no-foul ruling was given on it.

COMMENTARY: I include such cases since arguments and decisions often intermix them with cases regarding handwriting and document analysts. Unfortunately, some analysts claim equal expertise in stylistics or linguistics, and maybe a rather

universal ineptitude proves some of their claims correct.

1427. *Johnson v State*, 2001 Tex. App. LEXIS 3554 (Ap Houston TX 2001)

At [*2-3]: “State’s handwriting expert, Dale Stoval, as well as Ms. Mack [defendant’s girl friend], identified the writing on the temporary license plate as appellant’s. Mr. Stoval had over twenty-five years experience in handwriting comparison. He made his handwriting identification by comparing a sample of appellant’s writing, from inmate medical records, with handwriting on the paper license tag recovered from the Mustang.” It was not ineffective assistance of counsel, but trial tactics, that defense counsel did not call a handwriting expert to prove defendant did not write on the paper license tag and rebut State’s expert witness.

COMMENTARY: That the appeal asserted trial counsel ought to have retained and called a handwriting expert, as the State did, indicates that reliability of the expertise was unquestioned by both sides. “Dale Stoval” may be a misspelling for “Dale Stobaugh.”

1428. *Levy v Hunt, et al.*, 2001 Tex. App. LEXIS 2066 (Ap Houston TX 2001)

A handwriting expert testified that decedent’s signature on a change of beneficiary was invalid. However, “The jury could have found, for example, that Mrs. Levy signed her husband’s name by permission.” Appellant’s own handwriting expert testified that her signature to the change of beneficiary was authentic.

COMMENTARY: A case in which even the expert opinion in appellant’s favor was not favorable because the Court of Appeals found a possibility of a jury finding which apparently was not a reality in the record.

2002

1429. *Parker v State*, 2002 Tex. App. LEXIS 5415 (TX Ct Ap 2002)

Prosecutor informed defense counsel that Dennis Cox would be called as a handwriting expert. Request for continuance was denied by Trial Judge who said defendant could request her own handwriting expert, which she did not do. Later in her testimony defendant said she had written the letter that Cox said she had. There was no abuse of discretion in denying request for continuance.

COMMENTARY: There is no indication that challenge was made to Cox’s qualifications or to the reliability of handwriting identification. Acknowledging that the expert’s conclusion was right is maybe the best compliment to his reliability.

1430. *Reese v Duncan*, 80 S.W.3d 650, 2002 Tex. App. LEXIS 4149 (Ap Dallas TX 2002)

The Trial Court’s findings against appellant Reese are affirmed in an accelerated appeal in an election contest. There is an extensive legal discussion of applicable law in

overturning election results. The fact issue as to handwriting expertise is considered at [*5], *et seq.*, and [*25], *et seq.* Linda James was called by Duncan as a handwriting expert, but for reasons not explained the Trial Court only permitted her to testify as a fact witness. She pointed out similarities and differences among various signatures purportedly by the same person. The Judge did not permit her to point out anything he himself could not observe. The bottom line was that the Court concluded to what her expert opinion would have been if she had been permitted to state it, namely that certain voter signatures were false. Though Reese complained on appeal about James testifying as an expert, nothing was presented for appellate review since she had only testified as a fact witness. Further, the law permits the Trial Court to “compare the signatures on its own and determine the validity without hearing testimony from the voter or other witnesses regarding the similarity of the signatures.”

At [*27-28] the Court of Appeals states: “Thornton Reese argues that James’s testimony was insufficient to support the trial court’s findings. On cross-examination, James testified she did not know any of the voters, nor was she familiar with their medical history, the writing surface used when the signature was made, the writing instrument used, or what the voters were doing when they signed the forms. Thornton Reese argues that any one of these factors could have caused differences in the voter’s signatures. Also, the voters did not testify. Because it was within the trial court’s discretion to compare signatures without the aid of other testimony, it was not necessary that the voters testify. See *Tiller*, 974 S. W .2d at 777. Further, Duncan’s burden was to prove by clear and convincing evidence that the signatures were dissimilar, not to show why the signatures might be different. Thornton Reese could have refuted Duncan’s evidence by presenting controverting evidence showing that the signatures were genuine, but she did not.”

COMMENTARY: As stated previously, there is one point at least on which I agree with the critics, that it is illogical for a court to permit an expert witness to testify to observations but not the conclusion drawn from those observations. It is equally illogical to permit an expert to testify only to observations that the judge can make, as if the expert were not employing expertise in compiling, presenting and demonstrating the observations. The latter happened in this case. Who but an expert could have so expertly discerned the pertinent similarities and differences and so demonstrated them that her unstated conclusion was reasonably arrived at by the fact-finder?

The quote from [*27-28] is given as preface to suggesting how Duncan’s attorney could best have followed up with a question on redirect. After opposing counsel sets forth all the factors your expert did not know about, on redirect revisit each of them. For each factor then ask: “Why did you not investigate this factor?” The expert, if as thorough and diligent as Ms. James is from my own personal knowledge, would reply: “Nothing in the signatures indicates that this factor affected them in any way. This factor causes such-and-such effects in the writing. Therefore, even if it was present, it had no affect on the writing. There is no law that this particular factor must affect the writing in the way research shows that it can in some or even most cases.”

2003

1431. *Goldberg v State*, 95 S.W.3d 345, 2002 Tex. App. LEXIS 6114 (Ct Ap Houston TX 2002); petition for discretionary review refused by *In re Goldberg*, 2003 Tex. Crim. App. LEXIS 313 (TX Cr App 2003); certiorari denied by *Goldberg v Texas*, 2004 U.S. LEXIS 1219 (US 2004)

Appellant was convicted of a gruesome stabbing murder of a woman. Writings by him describing how he fantasized raping and killing women were introduced by the State to show motive by an otherwise seemingly normal youth. A handwriting expert authenticated these records.

COMMENTARY: Extracts from defendant's writings are given in the case report, and they are not recommended reading for the faint of heart.

2004

1432. *Pitts v State*, 2004 Tex. App. LEXIS 10808 (TX App. Eastland)

COMMENTARY: Carroll Martin testified as a handwriting expert.

1433. *In the Matter of the Estate of Gene E. Steed*, 152 S.W.3d 797, 2004 Tex. App. LEXIS 11349 (TX App Texarkana 2004); rehearing overruled, 2005 Tex. App. LEXIS 8 (TX App Texarkana 2005)

In a complex case of several issues, the sole handwriting expert testimony was offered by Linda James that decedent had handwritten a 1998 will. The reversal and remand was principally because the Court of Appeals found a non-existent will dated November 20, 2001, to have been duly executed by decedent, based on the computer version of the will and on the testimony of witnesses and of the notary who had previously sued decedent for sexual harassment and whose notary book was not signed by decedent when she notarized the will.

COMMENTARY: A case of routine admissibility, and a hopefully not routine exercise in holding unreality to be compelling evidence. I have an urge to say something regarding the possibility of the forgery of a non-existent but valid will; unfortunately, only non-existent words are worthy of such legal brilliance.

1434. *Stokes v Ferris*, 2004 Tex. App. LEXIS 4282 (TX App Austin 2004); petition for review dismissed, 2004 Tex. LEXIS 641 (TX 2, 2004); petition for review denied, 2004 Tex. LEXIS 1012 (TX 2004)

It states that "handwriting experts confirmed that the deed allegedly executed by Jay Stokes was a forgery," though it does not say explicitly that the experts testified at trial.

COMMENTARY: This is included as a case of routine admissibility on the assumption that the experts did testify. I should have left it out of the compilation, but this

act of repentance comes too late in the editing process, so let it stand for the hundreds of cases omitted because testimony was not clearly indicated.

1435. *Williams, et al., v Walker, et al.*, 2004 Tex. App. LEXIS 3034 (Ct Ap Waco TX 2004); review denied in *Walker v Williams*, 2004 Tex. LEXIS 713 (TX 2004)

A trespass to try title is reversed and remanded because Trial Court refused to permit appellants to amend their pleadings at trial to assert an affirmative defense based on forgery and statute of frauds. Because of this refusal the scope of testimony by appellants' handwriting expert had been limited.

COMMENTARY: I wonder if the limitation on the handwriting expert testimony was lifted since the cause of it was reversed.

2005

1436. *In the Estate of Ruby Fowler Cornes*, 175 S.W.3d 491, 2005 Tex. App. LEXIS 7106 (TX App. Beaumont 2005)

"Lloyd, as the proponent of the holographic will, had the burden of proving that the instrument was 'wholly in the handwriting of the testator.' *Tex. Prob. Code Ann. §§ 4(b)* (Vernon 2003); *Gunn v. Phillips*, 410 S.W.2d 202, 205 (Tex. Civ. App. - Houston 1966, writ ref'd n.r.e.). The testimony of two of the witnesses, Lloyd Fowler and Faye Shipman, an expert, [*13] was clear, direct and positive on the question of whether the 1998 holographic Will was all in Ruby's handwriting. The only contradictory evidence on the issue, from C.D., was not clear, positive or direct; and, C.D.'s opinion suffers from the fact that there was no proof that C.D. was familiar with Ruby's handwriting. When a witness is not properly qualified to testify, opinion testimony amounts to conjecture and has no probative value. *Leitch v. Hornsby*, 935 S.W.2d 114, 119, 40 Tex. Sup. Ct. J. 159 (Tex. 1996)"

The case report describes the legal requirements for a holographic will in Texas and other applicable law. The finding by the trial court that the holographic will was not wholly in decedent's handwriting was reversed. The order not to probate it was upheld since proponent did not show decedent was of sound mind when writing it. Admission of a prior will to probate was found to be error since it had been filed more than three years after death of the testator.

COMMENTARY: The report gives arguments back and forth why the wills in question should or should not be admitted to probate. Facts and law for and against each possibility are debated as it were until the close where the Court of Appeal gives its orders. This makes the case report more interesting and informative reading than the vast majority of them.

1437. *Dornbusch v State*, 156 S.W.3d 859, 2005 Tex. App. LEXIS 601 (TX App. Corpus Christi 2005); petition for discretionary review refused, *In re Dornbusch*, 2005 Tex. Crim. App. LEXIS 1841 (TX Crim. App. 2005)

“Marshall Doherty, the owner of the motel, testified that a registration card was filled out by a man matching Dornbusch’s description on December 8, 2000. He also testified to having picked Dornbusch’s picture out of the faculty photographs from a Hidalgo High School yearbook when asked by a school investigator to identify the man who rented the room.

“Kenneth Crawford, a handwriting expert, identified at least thirteen similarities between the handwriting [*4] on the registration card and Dornbusch’s handwriting, but he could not conclude with scientific certainty that Dornbusch had filled out the card.”

COMMENTARY: Defendant’s conviction “of inducing sexual conduct by a child” was affirmed. Presumably Crawford’s testimony served either to preempt purported evidence that Dornbusch did not make out the card or to satisfy jury expectation of scientific evidence. I can think of no other reason to have an honest expert testify to a weak opinion. The risk is that such weakness will be attributed to what otherwise is strong evidence.

2006

1438. *Delbosque v State*, 2006 Tex. App. LEXIS 3387 (TX App. Dallas 2006)

“Appellant also claims the evidence is factually insufficient. As the fact finder in this case, the jury was free to reject the testimony of appellant’s mother, girlfriend, [*28] and document expert.”

COMMENTARY: This is the entire discussion of the expert testimony, apparently offered by defendant. It reminds us how marginal our part in a case can be, at least from the viewpoint of judges and juries.

1439. *Miller v State*, 208 S.W.3d 554, 2006 Tex. App. LEXIS 2791 (TX App. 2006); petition for discretionary review refused, *In re Miller*, 2006 Tex. Crim. App. LEXIS 1736 (TX Crim. App. 2006)

COMMENTARY: Defendant’s conviction of capital murder was affirmed. To pay a debt, he used a check he claimed to have gotten from the murder victim as a loan. A handwriting expert testified the check had not been written by the victim.

2007

1440. *Barnwell v Eversole*, 2007 Tex. App. LEXIS 6966 (TX App. Beaumont 2007); opinion withdrawn, vacated, appeal dismissed, 2007 Tex. App. LEXIS 7976 (TX App. Beaumont 2007)

At [*10]: “In contrast to Eversole’s testimony, Barney testified he never signed the

letter agreement. Joanne testified she frequently consulted with Eversole both at the office and at the house during the construction phase, although she never talked with him after the suit was filed. There was testimony from handwriting experts: Eversole's expert testified Barney's signature was on the letter agreement; Joanne's expert testified she could not determine the authenticity of the signature. Presented with conflicting testimony, the fact-finder at the temporary injunction hearing was free to believe one witness over another. See *Naguib v. Naguib*, 137 S.W.3d 367, 377 (Tex. App.--Dallas 2004, pet. denied)."

COMMENTARY: This is the entire discussion of the expert testimony.

1441. *Dwairy v Lopez*, 243 S.W.3d 710, 2007 Tex. App. LEXIS 8049, 168 Oil & Gas Rep. 184 (TX App. San Antonio 2007)

"Dwairy testified he and Lopez executed the Mineral Deed, which was notarized by Cremar, [*7] on November 24, 2000. Dwairy denied ever seeing copies of any November 24, 2000 Unimproved Property Contracts. Dwairy's handwriting expert, William Simpson, testified he examined a copy of Lopez's known signature and a copy of the questioned signature, and he concluded the signatures were written by the same hand. Likewise, Simpson stated the known signature of Cremar and the questioned signature of Cremar were written by the same hand. Simpson admitted the documents he examined were not the originals, but instead, were certified copies, and he agreed photographic copies can be distorted. Simpson testified that although there were discrepancies between the known and questioned signatures, he thought there were more similarities than differences."

COMMENTARY: As Ordway Hilton said, it makes no difference how many more similarities there are than differences, because a single, significant difference that is not reasonably explained prevents an identification and, if cogent enough, compels an elimination. Somehow this myth of numerical preponderance of similarities over differences lives on in face of basic logic, common sense and overwhelming opinion among authorities. It is understandable that nonexperts are impressed by it, but it is inexcusable for one claiming to be an expert in any identification discipline to believe in it.

1442. *Fletcher v Harris*, 2007 Tex. App. LEXIS 2961 (TX App. Houston 2007)

Both parties presented lay and expert testimony to support their respective claims that a signature on a will was authentic or forged. The trial court found in favor of Harris that the will was not forged. In part the fact that Fletcher's expert had not examined the original of the will and only three exemplars weighed against him.

COMMENTARY: Not knowing anything further than what the case report tells us, we cannot fault Fletcher's expert for the paucity of materials examined. It might well be that the client failed to accommodate the insistencies of the expert, and, if so, for very good reasons of his own. One suspects the three exemplars were carefully chosen as

either the models for the forgery or very close to the model used.

1443. *Smith v State*, 2007 Tex. App. LEXIS 947 (TX App. Eastland 2007)

COMMENTARY: Dale B. Stobaugh, a supervising forensic scientist with the DPS Crime Laboratory, testified that defendant had written the demand note in the bank robbery.

1444. *Wilkes-Richardson v State*, 2007 Tex. App. LEXIS 5428 (TX App. Eastland 2007); petition for discretionary review refused, *In re Wilkes-Richardson*, 2007 Tex. Crim. App. LEXIS 1498 (TX Crim. App. 2007)

COMMENTARY: Mel Francis, handwriting expert with Midland Police Department, testified.

2008

1445. *Friar v State*, 2008 Tex. App. LEXIS 6809 (TX App. Amarillo 2008)

At [*5]: “The evidence at trial consisted of the discovery of a baggie containing six grams of methamphetamine on appellant’s person. Further, there was the expert testimony of the handwriting expert that opined that the letter [found in defendant’s purse] was in appellant’s handwriting. Later, another police officer, with over 20 years experience in drug trafficking, testified that the letter was typical of the type of ledger maintained by someone dealing in drugs on the street level.”

COMMENTARY: This is a good example of how an essential fact often must be proved by multiple sources of evidence.

1446. *Hannah v State*, No. 13-05-457-CR. (TX Ct. App. 13 Dist. 2008)

Hannah was found guilty of murdering a home-care patient, who was not diabetic, by administering a massive dose of insulin. A previous incident in Oregon was presented at trial. She had worked under an alias, and a patient, Anne Jones, had died under suspicious circumstances while Hannah’s actions were equally suspicious.

Several witnesses testified regarding the Oregon case, among them a handwriting expert: “Jones appeared to have signed a ‘do not resuscitate’ form (‘DNR’), but James Green, an expert in forensic document examination, testified that he did not believe that Jones’s DNR had actually been signed by Jones. In fact, he completely excluded the possibility. Green also examined Hannah’s handwriting, and he applied a system in which the likelihood of forgery is assigned a number on a one-to-nine scale, with nine being the most likely. On this scale, Green testified that the likelihood that Hannah had forged Jones’s signature on the DNR was a seven.”

COMMENTARY: Such numerical statements of probability are outside the consensus in the field of document examination, not least of all because the witness has not offered any numerical data to support his opinion nor can he cite research or other

publications supporting numerical statements of opinion.

1447. *Ortegon v State*, 267 S.W.3d 537, 2008 Tex. App. LEXIS 6925 (TX App. Amarillo 2008); rehearing overruled, 2008 Tex. App. LEXIS 9610 (TX App. Amarillo 2008); petition for discretionary review refused, *In re Ortegon*, 2009 Tex. Crim. App. LEXIS 601 (TX Crim. App. 2009)

Defendant “was convicted of felony driving while intoxicated and sentenced to 25 years confinement” because of enhancement from two prior convictions. Since the fingerprints on prior records were too poor for an identification, expert handwriting testimony was used to prove both priors.

COMMENTARY: The case report states that the expert had no more than one exemplar to use. Two mistakes were made by defense counsel. First, in Texas if a signature is denied under oath, it may not be proved by expert testimony. Second, competent expert testimony could have countered the questionable use of a single exemplar by citation to many authors in the literature of forensic handwriting identification. Also, there are case reports expressing skepticism about expert opinions based on a paucity of exemplars, whether in number or quality.

1448. *Robertson v State*, 2008 Tex. App. LEXIS 8137 (TX App. 2008 Eastland); petition for discretionary review refused, *In re Robertson*, 2009 Tex. Crim. App. LEXIS 580 (TX Crim. App. 2009)

At [*16]: “The record shows that the enhancement convictions were linked to appellant by a handwriting expert who compared appellant’s signature on State’s Exhibit No. 2 to his signatures on the two convictions used for enhancement. According to the expert, all three were signed by the same person. Consequently, the evidence is sufficient to link appellant to those convictions and to support the jury’s finding of true to the enhancement allegations. Appellant’s fifth issue is overruled.”

COMMENTARY: One wonders about a handwriting expert who can be certain enough to send someone to prison when there is only one exemplar for comparison. Even if the outlook is inverted and the two enhancement convictions are considered the exemplars, there is just enough to say “indications are,” which only raises suspicion.

1449. *Samet v State*, 2008 Tex. App. LEXIS 4916 (TX App. Tyler 2008); petition for discretionary review dismd, 2008 Tex. Crim. App. Unpub. LEXIS 867 (2008); petition for discretionary review refused, *In re Samet*, 2009 Tex. Crim. App. LEXIS 86 (TX Crim. App. 2009)

Defendant’s conviction of aggravated sexual assault of a child with life imprisonment was affirmed. His son testified defendant had previously given him sexually explicit notes which a handwriting expert testified were written by defendant.

COMMENTARY: A case of routine admissibility and hopefully far from routine parental care and concern.

2009

1450. *Obally v State*, 2009 Tex. App. LEXIS 8588 (TX App. Amarillo 2009)

COMMENTARY: Randy Nelson, a handwriting expert, testified that Defendant wrote a letter what was tantamount to a confession.

1451. *Rice v State*, 2009 Tex. App. LEXIS 2426 (Tex. Ct. App. Houston 2009)

A handwriting expert called by defense was qualified by stipulation of the prosecution. The expert said he could not say whether defendant wrote the incriminating check because he only had a fax copy sent to his office. After the trial, the judge ordered the expert to do another examination with better materials, and the defendant's expert concluded that defendant had written the incriminating check. That undermined all arguments on appeal.

COMMENTARY: There is a maxim that a cross-examiner should not ask a question if he does not know the answer. Much more so, one should not ask any witness a questionable question, such as ask at trial of one's own expert witness for an opinion without assurance of some kind of helpfulness to one's case. Sort it all out before trial and designate the expert as a confidential consultant if needed.

In a much later review of this commentary, I wonder about the unalloyed wisdom of this wise maxim. There must be a "why" that made the maxim a widely accepted maxim. If the "why" does not hold in a particular situation or is overridden by another consideration, why be guided by what one does not know versus what one has better than a shrewd suspicion of? If in a risk/benefit analysis the risk is so assured that the only remaining risk is the faintest possibility of a benefit, one might as well take the leap into the unknown.

1452. *Rivera v State*, 2009 Tex. App. LEXIS 903 (Tex. App. Amarillo 2009)

COMMENTARY: A handwriting expert testified that the signatures on documents in question were defendant's.

2010

1453. *In the Estate of Ronald Ray Wallis, Deceased*, 2010 Tex. App. LEXIS 1441 (TX App. Tyler 2010)

It was error to admit the testimony of handwriting expert, Denise Jarrett, since what she testified to was outside the pleadings.

COMMENTARY: This is another case that the careless reader, or one who is overenthusiastic to find support for a position, will represent as disqualifying the expert. Never accept interpretation of any writing as established fact until you check it out for yourself. To repeat what I said previously, personally double check any case I discuss before you use it for your own purposes. Being human I might omit a critical point or

misstate one. Be skeptical of your own interpretation of a writing, reviewing it and having someone else review it if necessary.

2011

1454. *Gold's Gym Franchising LLC v Brewer, et al.*, Cause No. 05-11-00699-CV. (Ct. App., Dallas, TX, 2011)

Page 16 of the decision states: "In this case, the only evidence raised by Jerry Brewer that his signature is not genuine on the Legacy I Contract and Guaranty is his own self-serving affidavit. (1CR 23-24) Brewer's expert provided no opinion on the 2005 Franchise Agreement and Guaranty. (1CR 31-34 for lack thereof) Gold's Gym controverted Jerry Brewer's affidavit with expert testimony by Linda James, a renowned document examiner, that the signature was genuine within a reasonable scientific certainty."

The footnote 5 on page 17 says: "Ms. James is a nationally recognized expert as a forensic document and handwriting examiner. Ms. James' opinions were not challenged or objected to by Defendants. See Record for lack thereof."

Brewer's document examiner, Robert Foley, is first referred to on page 13 as "Appellees' alleged expert." He submitted an improper affidavit that should not have been considered and which may have been another victim of lack of instruction on format and contents. He provided no opinion on the disputed document. Defendants did not disclose their expert prior to filing motion for summary judgment, which the trial court granted improperly since there was proven by plaintiff to be a disputed fact subject to consideration by the fact finder.

At page 22 the substantive, versus procedural, objection to Foley's affidavit is stated: "Appellant raised conclusory objections to the Affidavits of Jerry Brewer and Robert Foley. (1 CR 218- 232) The affidavit must provide the underlying facts to support the conclusion. *Rizkallah v. Conner*, 952 S.W.2d 580, 587 (Tex. App.--Houston [1st Dist.] 1997, no pet.) Conclusory affidavits are not credible or susceptible to being readily controverted. *Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (per curiam); *Maher v. PS Tex. Holdings, Ltd.*, 2010 Tex. App. LEXIS 4243, 11-12 (Tex. App.--Houston [1st Dist.] June 3, 2010, no pet.)"

COMMENTARY: If every conclusory report or affidavit offered by government trained document examiners were excluded in cases I have been involved in, at least half their offerings would be rejected. This is most evident in so-called reports from experts at Homeland Security and one of its predecessors, INS. At times I suspect courses in document examination for government trainees emphasize how magnificently smart they will all turn out as compared to all others, above actually learning to be at least moderately so. Thus by far they assert their government connections instead of setting forth their case-specific physical evidence, assuming they have enough to set forth.

1455. *Johnson v State*, No. 12-10-00110-CR. Court of Appeals of Texas, Twelfth District, Tyler (2011)

“Randy Hatch had thirty-eight years of experience as a peace officer. He had five of those years with the DEA. Given Hatch’s experience, a voir dire examination as to his qualifications in the area of narcotic trafficking would have been superfluous.

“Trial counsel did raise a timely objection to Hatch’s testimony as to handwriting and obtained a running objection to Hatch’s entire testimony regarding handwriting. We can imagine no trial strategy that might explain trial counsel’s failure to attempt to take Hatch on voir dire in order to explore his competency to make handwriting comparisons.”

COMMENTARY: There is no indication why the Court of Appeal was so emphatic about a voir dire of Hatch, who did testify as a handwriting expert.

1456. *Mascorro v State*, No. 13-11-00112-CR. (TX Ct. App. 13 Dist. 2011)

A kite with marijuana folded up in it was found in the prison cell Mascorro occupied. Kenneth Crawford, a forensic document examiner, testified that there was a “very strong probability” that Mascorro had written the note. Having only a copy, Crawford could not give a definite opinion.

COMMENTARY: A kite is a narrow strip of paper with microwriting that prisoners use to pass notes to each other.

1457. *Morris v Fuller*, No. 02-09-00442-CV. (TX Ct. App. 2 Dist. 2011)

COMMENTARY: The court credited the testimony of John Weldon, a forensic document examiner, that the signature on an assignment was Morris’ genuine signature.

1458. *Morris v Wells Fargo Bank, NA*, 334 SW 3d 838 (TX Ct. App. 5 Dist. 2011)

Jenet Fenner Masson, a forensic document examiner, testified for the bank and identified plaintiff’s signature on two deeds. The case report recounts her testimony regarding various limitations to her examination and technical possibilities for alternative explanations. The case report shows she did an admirable job of it, and for that it is well worth reading.

COMMENTARY: Masson’s qualifications were stipulated to, and plaintiff’s request that she be recalled for more testimony was granted. I assume it was in an effort to impeach her opinion, but it seems things only went worse for plaintiff.

2012

1459. *Arellano v State*, No. 13-11-00477-CR. (TX App. 13 Dist. Corpus Christi 2012)

“We will address appellant’s sufficiency issues together because they are based on a single set of facts. See TEX. R. APP. P. 47.1. In support of her issues, appellant argues Detective Hernandez’s handwriting comparison must be excluded in assessing the sufficiency of the evidence because she denied under oath that the alterations on the face

of the check were her handwriting. See TEX. CODE CRIM. PROC. ANN. art. 38.27 (West 2005). By her first issue, appellant argues that without the handwriting comparison testimony, the evidence does not show she made any changes to the face of the check, and that proof she lawfully possessed the check and deposited it is insufficient to show she made a forged writing. By her second issue, appellant argues that without the handwriting comparison testimony, there is no evidence to show she intended to defraud another because the evidence does not show she knew the check was altered when she deposited it.”

Conviction for forgery was upheld.

COMMENTARY: Texas has a rule that, if a person denies under oath having made a false writing, handwriting comparison *alone* is insufficient for conviction. In such a case corroborative evidence is required. The delicate part is what exactly will constitute corroborative evidence. This case report is an excellent discussion and review of the rulings bearing on this precise issue. Thus, it is particularly recommended to the study of those practicing in Texas and working criminal cases.

1460. *Champion v Robinson*, No. 06-12-00032-CV. (TX Ct. App. 6 Dist. Texarkana 2012)

This is not a case of handwriting expertise, but I find it interesting enough on another issue to warrant its inclusion. I have no idea whether this indicates law in Texas.

One footnote reads: “[15] Champion argues we can compare the signature in the record with a signature attached to his brief and determine the trial court erred. Documents attached to appellate briefs do not thereby become evidence. Further, any such comparison would require expert testimony by a handwriting expert.”

This is the first time in my recollection that I read in any court decision that the testimony of a handwriting expert would be required. The absence of it is often cited as support for another inference but without statement that it was required. Often enough a decision will mention the other ways in which handwriting can be legitimately authenticated.

1461. *Polinard v Gilmore*, No. 04-12-00061-CV. (TX App., 4th Dist., San Antonio, 2012)

“The parties could not agree on an expert so the trial court entered an order on January 6, 2006, appointing Dale Stobaugh as the handwriting expert. The order stated that the parties would share Stobaugh’s cost and expense equally, not to exceed \$1,000.00 per side.”

Polinard so failed to cooperate that he was sanctioned and had rulings given against him, while Stobaugh testified to the difficulties preventing his examining the documents and providing an opinion. Issues ranged from exemplars and failure to provide same, terminology for expressing levels of assurance in opinions, and other fine points of document examination, all topped off with why sanctions were quite justified. Polinard’s

failure to pay up his share of Stobaugh's fee resulted in his paying substantially more.

COMMENTARY: If you enjoy reading how someone gets his comeuppance, you might enjoy the complete original case report.

1462. *Wright v Marsh*, Nos. 12-10-00414-CV, 12-10-00367-CV (Ct. App. TX 12 Dist. 2012)

In two cases combined for the appeal, Wright was suing for defamation and to reopen a probate case on claim he was a creditor. Marsh was granted summary judgment on every issue he raised, which was confirmed upon appeal.

Marsh had received harassing mail which became a bit nasty. Larry Mars did the handwriting analysis which led him to say Wright wrote some of the offensive mail, but he could not say about other items. Based on his opinion, the D.A. decided to prosecute, but that seemed to have not resulted in a conviction. Wright sued Marsh for defamation, but she had nothing to do with the decision to prosecute and had only submitted the material to the sheriff's office for investigation. It seems there was a loss of faith in Mars' ability.

COMMENTARY: Ins and outs of it all are a bit complicated, so I have confined myself to a very general description.

2013

1463. *Page v State*, No. 03-12-00137-CR (Ct. App. TX 3 Dist. 2013)

Page was accused of molesting a child. He became suicidal but stopped several times before doing so. Footnote 2 reads:

"A handwriting expert for the State subsequently testified that she had compared the [suicide] note to another document written by Page and had concluded that there was a 'virtual certainty' that the suicide note had in fact been written by Page. Other witnesses provided testimony tending to show that Page had contemplated suicide. Page's stepson and J.F.'s father, R.F., testified that, on the night that Page was confronted by D.F., Conley, and Davis, Page called R.F. and told him that he was 'standing on top of a bridge right now' and that his 'life [was] over,' but that he was 'not going to jail' and that 'they will find me down the river tomorrow morning.' R.F. testified that he advised his stepfather, 'Don't do anything stupid. You don't want to take your own life. You need to ask for forgiveness for what you've done.' Additionally, Alan Lee, a family physician who had treated Page for several years, testified that Page had told him that he was suicidal and had considered killing himself with a gun in a field, but 'just couldn't pull the trigger.'"

His conviction and 75 years imprisonment were affirmed.

COMMENTARY: Our work is often on the fringes of a family tragedy of many proportions caused by a single impulsive act of a moment. Since we never know what such action by ourselves will have the same or greater consequences, maybe we had best

be scrupulous in avoiding the mistakes we have witnessed others made.

2014

1464. *Denar Restaurants, LLC, v King*, No. 02-13-00142-CV (TX App. 2 Dist. 2014)

Denar Restaurants sought to have a dispute with their former employee submitted to binding arbitration, but King denied signing a "Receipt of Employment Documents." Sue Abbey, handwriting expert, testified that the same person wrote the signature in question and King's exemplar signatures. However, due to a technical matter, the agreement for binding arbitration never came into effect.

COMMENTARY: Ms. Abbey is a certified member of NADE and has served in various positions on its Board of Directors.

1465. *McCullough and McCullough v Scarbrough, Medlin & Associates, Inc., et al.*, No. 05-11-01303-CV (Ct. App. TX 5 Dist. 2014)

Plaintiff testified that he did not recall whether he wrote a notation that \$25,000 was missing or what it was tied to. Footnote 5 states: "A document examiner and handwriting expert testified, however, that everything on the calculation of 'Missing \$' except for the final total was written by McCullough."

COMMENTARY: It would seem that the examiner's testimony was for impeachment purposes. Here is hoping all of us are not impeached for failure to recall every notation we may have made on any document and the reason for making it. On the other hand, if we are involved in court testimony, if at all possible we had better review every likely document with which we could be confronted in order to refresh our recollection before the confrontation.

2015

1466. *Business Product Supply v Marlin Leasing Corporation*, Number 13-11-00371 (TX Ct. App. 13 Dist. 2013)

BPS had 80 issues in its appeal, and seemed to have struck out on every one of them. One is of interest to us:

"In its thirty-third issue, BPS contends that the trial court erred in excluding the testimony of graphologist Carol Ritter. The trial court's ruling was 'based on [lack of] qualifications and on [lack of] reliability.' According to BPS, 'Ritter qualified as an expert with her years of practical experience, self-training and undergoing the rigors of self-assessment, and her use of the methods adopted as standards and guidelines.' This issue is inadequately briefed, particularly with respect to the trial court's ruling on the lack of reliability, for which BPS has failed to provide a clear and concise argument with appropriate citations to authorities and to the record. See TEX. R. APP. P. 38.1(i). Accordingly, we conclude that BPS has not demonstrated that the trial court abused its

discretion in striking Ritter's testimony based on lack of reliability.”

COMMENTARY: Without having reviewed all 80 issues, I did note a number of them had the same flaw as number 33, a lack of adequate briefing. One or more of the specific items needing coverage were missing or inadequately treated in the appeal brief, which, I suggest, could include these:

- What precisely would have been the testimony that was not permitted?
- What effect might it have had on the outcome of the case and why?
- What legal authorities support the contention that the trial judge erred?
- What are the criteria of reliability that applied and how did the expert satisfy each one?
- How did the expert satisfy the standard of competence or qualification it was said the expert did not meet?
- What authorities in the particular discipline support the expert’s qualifications and performance?
- And, besides all that, is there any other little prop one can add to support relevance, reliability and admissibility of the excluded or limited expert testimony?

3. Texas Court of Criminal Appeals.

1994

1467. *Zimmerman v State*, 860 S.W.2d 89 (Cr App. Tex. 1993); conviction vacated and remanded on other grounds, 114 S. Ct 394, 510 US 938, 126 L.Ed.2d 324 (1993); conviction upheld on remand, 881 S.W.2d 360 (Cr App. Tex. 1994)

Comparison of handwriting is sufficient proof when handwriting or signature is not denied under oath. A letter from defendant to a former attorney was authenticated.

“Error complaining of insufficient authentication was waived, where complaint on appeal differed from that lodged at trial.”

COMMENTARY: While in jail before trial, defendant wrote letters, one to the District Attorney describing the murder. A less than brilliant move.

2003

1468. *Swearingen v State*, 101 S.W.3d 89, 2003 TX Crim App LEXIS (Ct Cr App TX 2003)

Defendant claimed to have received a letter from a third party describing the abduction and murder of the woman whom he was accused of killing. A handwriting expert testified that a list of words with their Spanish translation, of which the letter was composed, was in defendant’s handwriting.

COMMENTARY: This gave evidence that defendant had composed the letter and had another person write it..

2016

1469. *Meshell v Lippi*, No. 02-15-00212-CV (Ct. App. TX 2016)

A man sued a woman to enforce an alleged written promise to marry. Handwriting experts for each party testified to the genuineness and not of her signature. Trial court's ruling was upheld that there was neither a common law nor informal marriage.

"A forensic document examiner testified for Meshell and stated that, in his opinion, the signature on the Informal Marriage Agreement was Lippi's signature. A document examiner also testified for Lippi. That document examiner testified that she saw indications that Lippi's signature on the document might not be genuine and that, with respect to Lippi's signature on the 2005 Common Law Partner Agreement, 'the evidence very strongly show[ed] that the signature [was] highly probably . . . some type of duplicate' of Lippi's signature on another document."

COMMENTARY: Either the trial court was not quite sure what the wife's expert had said or that expert was not quite sure what he himself was saying. It is a close call whether to explore or let lay for final argument an opposing expert's inexpert use of terminology. I think saving it for final argument avoids the risk of more expertly obfuscating evidence.

4. Texas Supreme Court.

I have found no decisions by the Supreme Court of Texas addressing issues of handwriting expertise.

RR. UTAH CASES.

1. Utah Trial Courts.

I have no Utah cases on handwriting expertise solely on the trial level.

2. Utah Courts of Appeal.

2005

1470. *The Berkshires, L.L.C., et al., v Sykes, et al.*, 2005 UT App 536, 127 P.3d 1243, 541 Utah Adv. Rep. 8, 2005 Utah App. LEXIS 552 (UT App. 2005)

Plaintiffs prevailed in a suit to set aside a grant of easement and grant deed recorded in 1999 and purportedly signed by them approximately 22 and 23 years earlier. Judgment was affirmed.

Of facts (a) through (q) in support of the judgment the first three are:

"(a) All six signatures on the Easement Document and the two signatures on the

Quit Claim Deed were signed using the same pen.

“(b) Both the Quit Claim Deed and the Easement Document were typed on the same typewriter at the same time.

“(c) George Throckmorton, an eminent handwriting expert, testified that all six signatures are in all likelihood simulated forgeries.”

A lay witness also testified to the falsity of some signatures. Claim of error to both the expert and lay witness to handwriting was based on the Utah provision that, if there is a subscribing witness alive and available, an opinion witness would not be permitted. However, the purported notary had no recall of the matter, so there was no subscribing witness available, contrary to defendant’s claim.

COMMENTARY: Each state may have its own peculiar laws divergent from the common law or the statutory and case law shared by most states. It is advisable to collect and keep the ruling statutes and reported cases for your own state, just as you would keep reasonably abreast of new laws governing your use of your drivers license.

I am quite skeptical that any expert, however eminent, could prove the same pen was used for signatures on two or more documents. One could prove the same make and model of pen was used or pens indistinguishable as to make and model. Also, I met no typewriter that could type more than one document at one time. By their very nature typewriters are made to type one page at a time, unless one is typing multiple carbon copies, then one is typing duplicates of the same document. Feeling I might be missing some rare technical expertise, I would wish the case report stated the expert’s data behind the assertions of items (a) and (b).

2016

1471. *In re Estate of Anderson*, 2016 UT App 179 (UT Ct. App 2016)

“¶3 In February 2012, Bryan designated Kathy S. Carlson as his expert witness and forensic document examiner. In March 2012, Denise disclosed that she intended to call George J. Throckmorton as her expert witness. Each party disputed some aspect of the other's expert designation, but at a pretrial conference in August, the trial court and the parties agreed that the court would appoint a single expert witness to serve in the case, for whom the parties would share the cost.[2] In October, ‘[a]fter reviewing the qualifications of the proposed experts, the Court [found] that James A. Tarver, Forensic Document Examiner, [was] the best qualified to serve as the Court's expert in this matter.’ The parties submitted to the trial court their questions for Tarver, and Tarver provided answers to the questions, along with other relevant findings, in a ‘document examination report.’”

The court went with Tarver’s opinion that the gift letter allegedly by Anderson that Denise relied on was not genuine, other evidence supporting Tarver’s conclusion. Denise’s appeal claiming error was denied. The trial judge’s exclusion of Throckmorton’s report was upheld. The exclusion was not to Throckmorton’s detriment but to Denise’s

agreement to a joint expert and other decisions made at trial.

COMMENTARY: I equate the agreement to a joint expert chosen by the court to be like buying a house as is. No matter how much one did not know about the house and all implications of “as is,” one is stuck with every detriment agreed to sight unseen. My recommendation is do not make an agreement or stipulation that binds you unless you have checked the ins and outs, particularly why the other side is so agreeable to your being tied down without knowledge of the knots in the ropes binding you. Talk to your expert before agreeing to something you hired the expert to advise you on.

I had only one case where the judge chose a third expert after hearing from the two of us the parties presented. The allegedly independent court-appointed expert used documents the judge had not provided and testified to issues from my report and testimony the judge had not submitted. Such evidence of the independent expert being quite in cahoots with the other side was of no moment to the judge who accepted the evil fruit from the tree of knowledge of good and evil, ignoring every indication of evil.

The moral to both these stories is the same: Never buy a pig in a poke.

3. Utah Supreme Court.

1996

1472. *State v Crosby*, 302 Utah Adv Rep 36, 1996 UT LEXIS 93, 927 P2 638 (UT 1996)
Conviction for theft and forgery affirmed in part and remanded in part.

“The Court of Appeals transferred the case [to the Utah Supreme Court] for determination of proper standard for admitting scientific evidence.” Polygraph evidence is not admissible, but handwriting expert was sufficiently qualified. Defendant could not dispute inherent reliability of handwriting evidence where defense counsel also took affirmative steps to place it before court. George Throckmorton, defense expert, “indicated that in his opinion, Detective Hutchinson [Prosecution expert] lacked the necessary qualifications to be nationally certified in the field.” Nevertheless, Brent Hutchinson was found sufficiently qualified. *State v Rimmasch*, 776 P2 388 (UT 1989), four years before *Daubert*, had set standards in Utah and was the ruling case on admissibility of expert testimony.

COMMENTARY: *Rimmasch* set essentially the same reliability standards as *Daubert*, and thus one can infer that the two experts would have been equally admissible in Federal Court. I have expressed elsewhere in this text my belief that testimony by one expert that another is unqualified should be considered unethical because it reduces professionalism to cheap backstabbing and invades the legal province of the judge.

2003

1473. *Cazares v Cosby et al., Headlands Mortgage Co., et al., v Weeir, et al.*; [Estate of Rosemary Cosby]; 2003 Utah 3, 65 P.3d 1184, 467 Utah Adv. Rep. 12, 2003 Utah LEXIS 10 (UT 2003)

Trial Court held *in limine* hearing and dismissed Cazares' proffer of handwriting evidence to prove forgery of several deeds allegedly bearing decedent's signatures. Supreme Court ruled this was error. Utah law provides for a subscribing witness to authenticate a signature; and, only if a subscribing witness is not available, may handwriting comparison be permitted to do so. The notaries had not personally seen some signatures signed, so it was error not to permit handwriting expert evidence. For other documents in question, the notaries said they saw the signatures made, so handwriting expert evidence would properly not be permitted for them. For other signatures it was not clear from the record, so the Trial Court had to hold a hearing to determine it.

COMMENTARY: The reliability of handwriting comparison was not contested, only the legal rule on whether it was admissible given the facts of the case.

2007

1474. *State v Beck*, 2006 UT App 177, 136 P.3d 1288, 551 Utah Adv. Rep. 6, 2006 Utah App. LEXIS 178 (UT App. 2006); writ of certiorari granted, 150 P.3d 58, 2006 Utah LEXIS 189 (Utah, 2006); affirmed, 2007 UT 60, 2007 Utah LEXIS 143 (2007)

Defendant's convictions for forcible sexual abuse and other offenses were reversed and remanded. Part of the evidence against the teacher were letters she purportedly wrote to one of her female high school students. State's fingerprint expert testified that her prints were on one letter, and the handwriting expert testified she had written the letters.

The Court of Appeal stated: "Defendant called several witnesses who controverted K.S.'s testimony and testified that Defendant was not where K.S. claimed she was on particular dates. Defendant also called expert witnesses who testified that the correspondence did not match [*4] Defendant's composition style and that the handwriting on the correspondence was not Defendant's but was likely written by someone familiar with her handwriting. Finally, Defendant herself testified that she had not had a sexual relationship with K.S., had never sent her romantic correspondence, and had never provided alcohol to her. She testified that she had once given her email password to K.S. and that she regularly gave her writing paper to students."

The judge extensively cross-examined defendant twice in front of the jury and in a prosecutorial manner. That gave such appearance of judicial bias that it was unreasonable to assume it did not contribute to the convictions. The Supreme Court agreed.

COMMENTARY: The way the case report is worded it seems that both linguistics and handwriting experts were called by the defense.

SS. VERMONT CASES.

1. *Vermont trial courts.*

I have no case reports for Vermont trial courts. Vermont does not have a court of appeals below its supreme court.

2. *Vermont Supreme Court.*

2002

1475. *Eckstein, et al., v Estate of Mildred Lidell Dunn*, 174 VT 575, 816 A.2d 494, 2002 VT LEXIS 334 (VT 2002)

COMMENTARY: A will had alterations made in red ink. A handwriting expert testified that these changes in red ink were made by decedent.

TT. VIRGINIA CASES.

1. *Virginia trial courts.*

2005

1476. *Bowman, et al. v Mericle, et al.*, 2005 Va. Cir. LEXIS 279 (Cir. Ct., City of Norfolk, Va. 2005)

The judge begins by noting there are nine volumes of proceedings, the Court's file is of six volumes, there are three boxes of exhibits, and that no useful purpose would be served in reciting the conflicts in evidence. "The Commissioner's report is thirty-four pages (excluding exhibits), and it resolves the conflicts." It was distressing that only one attorney conducted himself as a gentleman.

Complainant's exception number 9 addresses handwriting expert testimony. "The Commissioner relied on the testimony given by expert document examiner Cina Wong" over that of Farmer and Demonch.

COMMENTARY: Ms. Wong is a certified member of National Association of Document Examiners.

2007

1477. *Lee, et al. v Park, et al.*, 73 Va. Cir. 219, 2007 Va. Cir. LEXIS 80 (Cir. Ct. Fairfax County, Va. 2007)

Plaintiff tenants attempted to defeat an unlawful detainer by claiming receipts

proved they had paid full rent. Defendant landlords endeavored to prove forgery, and they prevailed. Regarding their handwriting expert, the judge states:

“I was not persuaded that the testimony of Koppenhaver, the landlords’ document examiner, proved that the numeral ‘1’ on the contested receipts was forged. While I recognize Koppenhaver, [*16] a qualified handwriting expert, may have the ability to discern minute differences in the writing of various individuals, her testimony did not persuade me she could do so in this case.”

But the Tenants could not rejoice over that embarrassment to the defendants’ expert, since it was due to their own action:

“However, it is noteworthy that the Tenants’ failure to maintain original receipts precluded Koppenhaver from comparing the ink used in writing the numeral ‘1’ on the contested receipts. Plainly, such an analysis might have been conclusive. This circumstance [*17] raises the inference that if the originals had been available, they would have proven the receipts were not in Park’s handwriting. See *Wolfe v. Va. Birth-Related Neuro. Injury Comp. Program*, 40 Va. App. 565, 580-82, 580 S.E.2d 467 (Va. App. 2003) (adverse inference permitted where defendant failed to perform tests that would have established malpractice).”

COMMENTARY: This case also teaches us an important lesson, namely that an expert’s evidence can be helpful by being supportive of other evidence and not necessarily dispositive in and of itself: “Further, the Court received testimony from Koppenhaver, which while not sufficient in itself to prove the forgeries, when considered with all the evidence has been given some, albeit not decisive, weight in considering the forged receipt payment issue.”

Ms. Koppenhaver was a member of National Association of Document Examiners before she founded her own association.

2008

1478. *Indymac Mortgage Holdings, Inc., et al. v Almquist, et al.*, Civil Action No.: CL06003927 (Cir. Ct. Alexandria VA 2008)

COMMENTARY: Cina Wong testified for plaintiff that a signature was false, which the purported signatory had denied writing. The court found for plaintiff.

2. Virginia Court of Appeal.

1997

1479. *Wileman v Commonwealth*, 484 S.E.2d 621, 24 Va. App. 642 (Ct. App. VA 1997)

At page 623: “At trial, Lonnie Powell, Vice-President of South Boston Bank and the chief executive officer for local branches, testified that he had been a banker for twenty-four years and that his duties included identifying and authenticating signatures of

bank customers.” He compared the Wileman’s signatures on the bank’s signature card and to two negotiated checks to the signature on the alleged forgery. It was not error to admit his expert testimony that they were all from the same person.

COMMENTARY: I cannot recall offhand another modern case of a banker testifying at trial as a handwriting expert. As the rules of evidence are written, experience alone can qualify an expert witness if it satisfies the judge. That the Virginia cases cited regarding bankers as handwriting experts are dated 1905, 1924, and 1927 seems to indicate nothing to nearly nothing of recent vintage was available.

1999

1480. *Beverly v Commonwealth*, Court of Appeals of Virginia, Memorandum Opinion by Judge Larry G. Elder, Record No. 0852-98-2, June 29, 1999.

In conviction for murder and related crimes, it was not error for District Court not to appoint handwriting and fingerprint experts for defendant. “The evidence introduced at trial linked appellant to exhibits 6, the note proposing sex, and 10, the list of ways to disguise oneself, by handwriting, and exhibit 7, another note, by fingerprints.”

COMMENTARY: The exhibits were tied to appellant in other ways.

2000

1481. *Basinger v Commonwealth*, 2000 Va. App. LEXIS 419 (VA Ap 2000)

In a conviction for forgery, sole issue on appeal was “whether the trial court erred in admitting expert testimony on a handwriting comparison. Finding [*2] no error, we affirm.” Luther M. Senter was the document examiner with four years at Virginia Division of Forensic Science and thirty previously with the FBI. He testified that he followed a method accepted in his field, such as he “uses a hand held magnifying glass.” It would be error “to refuse to allow an expert witness to state an opinion based on such a comparison,” that is side-by-side comparison of questioned and genuine writings.

COMMENTARY: The case cites the legal authorities on admissibility of handwriting expert testimony in Virginia.

2002

1482. *Barr v Commonwealth*, 2002 Va. App. LEXIS 218 (VA Ct Ap 2002)

Amanda Loving Barr appealed her forgery conviction which was upheld. Forensic document examiner Richard Horton identified Barr as writer of forged time sheets on behalf of her husband. He used “indications” as a positive identification. At [*6]: “Horton noted that while different inks were used for different documents, each individual form contained only one type of ink, which suggested that the same person and same instrument prepared all parts of the form.”

COMMENTARY: After hearing a proffer of Barr's husband's testimony that she did not write the forms, the trial court excluded it because the expert fingerprint, handwriting and ink evidence was more than sufficient to convict.

1483. *Keyes v Commonwealth*, 39 Va. App. 294, 572 S.E.2d 512, 2002 Va. App. LEXIS 698 (VA App. 2002)

"On February 27, 2001, Lucille Pullin, an employee [*2] of Augusta Correctional Center, was sorting outgoing mail when she found an envelope bearing a return address from Randall Keyes and addressed to Roslyn Carter. In 1998, Keyes attempted to rape Ms. Carter. Pursuant to instructions she previously received, Ms. Pullin removed the letter and forwarded it to Sgt. Wayne Thompson, the institutional investigator at Augusta Correctional Center.

"Sgt. Thompson opened the letter and contacted Special Agent Ron Hall [who] examined the letter and submitted it...for handwriting analysis. Richard Horton, a forensic document examiner, determined that the handwriting on the envelope was quite comparable and similar to the known samples of Keyes' writing. Furthermore, Horton testified that the indented writing found on the letter paper within the envelope resulted from an original writing by Keyes."

COMMENTARY: The wording suggests the opinion about the indented writing was stronger than that about the original writing on the envelope. This cautions us against always taking case reports as unqualifiedly accurate. I am sure any document examiner will say that examining indented writing is akin to examining a photocopy in the limitations of assurance one can have.

2005

1484. *Morrill v Morrill*, 43 Va. App. 621, 600 S.E.2d 911, 2004 Va. App. LEXIS 397 (VA App. 2004); rehearing granted, en banc, stay granted, 44 Va. App. 18, 602 S.E.2d 410, 2004 Va. App. LEXIS 569 (VA App. 2004); different results reached on rehearing, 45 Va. App. 709, 613 S.E.2d 821, 2005 Va. App. LEXIS 289 (2005).

In a divorce action a commissioner heard evidence and found that the husband had deserted the wife. The husband had claimed the wife forged his name while incurring credit card debts, but the commissioner found the evidence of forgery to be in "equipoise." The husband asked the judge to hear evidence from a handwriting expert on the issue of wife's forgery, and the judge received this evidence and found it credible for purposes of equitable distribution of property. However, although wife's forgery contributed to the breakup of the marriage, it was not an excuse for the husband to desert her. The judge also awarded attorney and expert witness fees that the husband incurred in bringing evidence of the credit card forgery by the wife.

In 600 S.E.2d 911, the Court of Appeal had reversed on basis that hearing evidence from the handwriting expert was error. In 613 S.E.2d 821, different results were

reached as described above. Thus the trial court's findings were affirmed on appeal.

COMMENTARY: This case raises a question as to two issues. First, no matter the fiscal challenge the marriage may offer, ought a man maintain the chivalry characteristic of the male of the species, and, for the sake of matrimonial stability if not bliss, ought he go further and, second, shower his spouse with the material goods otherwise lacking in her life and thus inspire her to eschew even irresistible temptation to resort to forgery to uphold her happiness? Gentlemen all, I urge you to keep in mind the old adage: "Happy wife, happy life!"

2007

1485. *Campbell v Campbell*, 49 Va. App. 498, 642 S.E.2d 769, 2007 Va. App. LEXIS 141 (Ct. App. Va., Richmond 2007)

In a divorce action both parties appealed on several issues, but the matter was reversed and remanded on only one. The trial court had limited the time parties could present their cases, including cross-examination of adverse witnesses. Consequently the husband had run short of time and could not conduct full cross-examination of wife's handwriting expert, Dr. Hartford Kittel. Since this violated constitutional trial rights that are fundamental to administration of justice, it was not a harmless error.

COMMENTARY: I found no other reference to Dr. Kittel in either Google Scholar Case Law or Google Advanced Search. This may mean nothing since there was no challenge to his admissibility.

2009

1486. *Baker v Commonwealth*, 2009 Va. App. LEXIS 75 (Ct. App. VA 2009)

Defense motion to exclude a forensic handwriting analyst was denied in a conviction for forgery.

COMMENTARY: The case report does not discuss the testimony of the forensic handwriting analyst, but since denial of the motion to exclude was assigned as error on appeal, one can safely assume the analyst was found to be reliable and testified at trial.

2012

1487. *Hopper v Commonwealth*, Record No. 2492-10-2. (VA App. 2012)

A handwriting expert testified that defendant's handwriting was not on the forged checks, but his girlfriend's was.

COMMENTARY: A case of routine admissibility which raises a routine mystery in the *comedia humana*. Did the man or woman manipulate the other? I once testified for the prosecution in a preliminary hearing to determine whether a couple should be bound over to answer for the charge of forging a check in an amount that was more than

\$60,000. When it became clear to one and all that the prosecution had a case as solid as the Rock of Gibraltar, the man fell on his sword so the wife could escape prison. As Professor Higgins sang in *My Fair Lady*, though a stray male here and there has an inexcusable flaw, “By and large we are a marvelous sex.” The couple had invested locally and unwisely, purchasing a modest motor cruiser and other toys, rather than taking off for a safer clime and buying a home.

2014

1488. *Hall v Commonwealth*, Record No. 1626-13-1 (VA Ct. App. Chesapeake 2014)

Part of the evidence in a murder trial was who signed as sellers to numerous titles to cars owned by the victim. A handwriting expert testified appellant could not be eliminated as the author of the seller signatures on the titles. Seemingly there is no indication that he did in fact sign any of the titles as seller. The body was never found.

COMMENTARY: How does one prove, and a jury find, and a court of appeal uphold a murder case where there is no evidence from the proverbial smoking gun, not even whether a gun was actually used? This case report may be one of the best to read if you have been mystified on this issue of proof. The burden of much of the evidence seems to be that of the handwriting expert testimony, that this particular area of evidence neither proves nor disproves Hall signed the sellers’ names, so he cannot escape through that evidential door. There is no indication that defense counsel endeavored to effectuate his escape through any of the several doors the prosecutor’s evidence seems only to have closed off to him but not locked. One wonders whether the jury convicted only because no defense was persuasive. The string of lies Defendant told might have been the most compelling evidence of guilt.

Too often an opinion, such as a suspect cannot be eliminated, is incorrectly considered to be positive proof of guilt. On the other hand it may incorrectly be taken as an inconclusive opinion. I testified once that the handwriting evidence did not permit an opinion of either identification or elimination. The judge said that I had an inconclusive opinion. I immediately said I had a definite opinion, namely, the available handwriting evidence did not permit a reliable elimination or identification. I hope the attorney calling me made an effective jury argument that the opposing handwriting expert had made an insupportable opinion of identification, reminding the jurors of the objective reasons given in support of my definite opinion.

2015

1489. *Cicilese v Commonwealth*, Record No. 2210-13-2 (Ct. App. VA 2015)

Cicilese was convicted of conspiracy to distribute illegal drugs. Her conviction was reversed and rendered because there was not sufficient evidence that she did so. Among the missing evidence was that neither side offered a handwriting expert to

determine whether cursive and printed handwriting on owe sheets were by two persons or one. If by two, then one could infer she had a partner she was conspiring with. If by one person only, at least two are needed for a conspiracy.

COMMENTARY: A nice part of being on one's own is that one can change one's own parameters at will. As to limiting cases included to those where handwriting expertise was proffered or its reliability considered, I change that parameter for this case. It is the only one I recall coming across where the absence of handwriting expert testimony contributed to a positive outcome, positive from Defendant's viewpoint at least. Some dispute the worth of having handwriting experts involved in legal wrangles, but I doubt the same individuals will argue the worth of not having them around at all. Yet, the decision suggests the Virginia Court of Appeals might think them of some evidential worth.

2016

1490. *Zhang v Tung*, Record No. 1325-15-1 (Ct. App. VA 2016)

"Husband argues that the trial court's letter opinion did not 'give any justification or explanation as to the reasonableness of the award of attorney fees.'

"To support his argument that the trial court erred in awarding wife \$20,000, husband specifically notes that the trial court excluded the testimony of wife's handwriting expert. However, in its letter opinion, the trial court ordered wife to be solely responsible for the fees for that expert.

"Contrary to husband's arguments, the record supports the trial court's award of \$20,000 to wife for her attorney's fees."

COMMENTARY: This is included as an example how a matter could be misunderstood and thus misrepresented. No reason is given why the wife thought husband should bear the expense of her expert. If we gave way to wondering why, we must ask ourselves a very serious question: Does such speculation contaminate our forensic opinions which must be solely based on objective, verified physical facts? Also, does the nature of our favored speculation indicate a bias? For example, if we thought she was just being cheap or vindictive, might we be prejudiced against women? If we think it shows husband kept her in near poverty, might we be prejudiced against men?

3. Virginia Supreme Court.

2001

1491. *Kidd, et al., v Gunter, et al.*, 262 VA 442, 551 SE2 646, 2001 Va. LEXIS 97 (VA 2001)

The Supreme Court affirms the probate court's finding that decedent had handwritten a journal that had testamentary intent but that the name at the start was not

the statutorily required signature, and thus the journal was not a holographic will. At page [*3]: “At a hearing before the circuit court, two witnesses testified that the handwriting appearing on the inside cover of the journal and on the pages numbered 1 through 12 is that of the decedent. A witness who qualified as an expert in document examination agreed. However, the expert explained that Fore wrote some of the passages in different inks and that she did not write all the pages of the journal offered as her last will and testament at the same time.” At page [*9] it is stated that nothing indicated that the purported will was completed and adopted by decedent. “With regard to the lack of finality, it is also significant that there was undisputed evidence that Fore wrote the passages in different inks and at different times.”

COMMENTARY: It would be interesting to know the details of the “undisputed evidence” that writings were made at different times.

2005

1492. *WBM, LLC v Wildwoods Holding Corp.*, 270 Va. 156, 613 S.E.2d 402, 2005 Va. LEXIS 53 (2005)

At page 404, plaintiff called an adverse witness and asked if he still denied his signature on a contract, and he said that he did. “However, his sister, Susan, testified that the signature on the contract was Jerry’s and a handwriting expert testified to the same effect.”

COMMENTARY: Nevertheless, defendant prevailed at trial and on appeal because of other issues.

2006

1493. *Grubb, et al. v Grubb*, 272 Va. 45, 630 S.E.2d 746, 2006 Va. LEXIS 57 (2006)

Decedent, Evan Belle Logan, left her estate to be divided equally among her seven siblings, and she appointed one brother, Ernest, to be her executor. It was alleged that the executor was falsely representing that part of the estate had been his joint property with decedent and so was not to be shared with the other siblings. As part of the evidence against Ernest, Roy, another brother, called a handwriting expert as described at page 750: “Dr. Larry Miller, a forensic document examiner who qualified as an expert witness, also testified as part of Roy’s case. He opined that Ernest, not Logan, actually signed Logan’s name on all but one of the Washovia certificates at issue.”

Thus, it was proved that Ernest was not frank in representing the alleged joint accounts. The chancellor at trial “found that the remaining seven accounts were created by Ernest using his power of attorney and, thus, Ernest’s actions involving these accounts were subject to a presumption of constructive fraud.”

At page 752 it is stated that Ernest’s testimony was rejected on credibility issues, among which were self-contradictions. “After making this observation, the chancellor

accepted Dr. Miller's opinion that Logan had signed only one of these certificates."

COMMENTARY: Dr. Miller is a member of National Association of Document Examiners and head of the forensic science department at East Tennessee State University which offers accredited courses in document examination leading to a graduate certificate.

UU. WASHINGTON CASES.

1. *Washington Trial Courts.*

I have no case reports for Washington trial courts.

2. *Washington Courts of Appeal.*

2000

1494. *State v Lee*, 99 Wn. App. 1006, 2000 Wash. App. LEXIS 128 (WA App. Div. 1, 2000)

A handwriting expert testified that she could not identify Lee as the one who passed stolen and forged checks. However, Lee was identified by store personnel as the one who passed the checks.

COMMENTARY: One is mystified why expert testimony is presented to help the fact finder when, as far as the case report reports to us, no helpful information is provided by the expert.

2001

1495. *State v Carstensen*, 2001 Wash. App. LEXIS 1459 (WA App. Div. 2, 2001)

"A handwriting expert could not identify or eliminate Carstensen as the writer, signer, or endorser of the check, but stated that there were indications that she fit all three categories. [*4] She added that these indications equaled a weak conclusion that Carstensen forged the check."

Later: "With regard to whether the check was falsely made or completed, Lien testified that she did not write or sign the check Carstensen cashed. That check misspelled Lien's first name in the same way that some of Carstensen's handwriting samples did. Furthermore, according to the State's expert, there were indications that Carstensen wrote and signed Lien's name on the check. Viewed in the light most favorable to the prosecution, [*7] this evidence is sufficient to show that the check was forged by Carstensen."

COMMENTARY: The handwriting expert misinterpreted the meaning of "indications are." The result was a conviction based only on suspicion. Given Albert S.

Osborn's observation that everyone writing in the same language and system will have similar features, there will be "indications" many people made the forgery in question, maybe including the expert witness.

2002

1496. *State v Sullivan*, 2002 Wash. App. LEXIS 626 (WA App. Div. 1, 2002)

"Before trial, the State disclosed to Sullivan that it intended to call handwriting expert Sgt. Robert Floberg to testify that Sullivan wrote the check on Baker's account that gave rise to Count II. But [*12] on the morning of the second day of trial, the prosecutor, for the first time, asked Sgt. Floberg to examine the check underlying Count IV as well. When court convened later that morning, the prosecutor sought permission from the court for Sgt. Floberg to testify that the handwriting on the check in Count IV matched Sullivan's. The court agreed to allow the testimony, but granted the defense additional time to have its handwriting expert examine the check.

"After Sgt. Floberg's testimony, defense expert Hannah McFarland testified that the results of her analysis on the question of whether Sullivan wrote the check in Count II were 'inconclusive.' Court then recessed for the day, and Sullivan asked McFarland to examine the check in Count IV that evening.

"It appears that she concluded that there were 'indications' that Sullivan had written the check. Sullivan then moved for a mistrial on the basis that he was now faced with calling an expert who would testify unfavorably as to Count IV. The court deferred ruling on the motion, but precluded the State from asking McFarland about her opinion on the check in Count IV unless Sullivan did so. Sullivan decided to do so. After McFarland testified, [*13] Sullivan renewed his motion for a mistrial. The court denied the motion."

COMMENTARY: There is discussion among the appeal justices as to why denial of the motion for a mistrial was not error. McFarland used "indications" in its precise meaning, that some writing traits in the Count IV check were similar to defendant's, nothing more. If properly argued, McFarland's opinion supported acquittal because it was tantamount to saying that technically it could not be proven at all, much less beyond a reasonable doubt, that defendant had written the Count IV check.

Hannah McFarland is a certified member of National Association of Document Examiners.

2003

1497. *State v Bean*, 2003 Wash. App. LEXIS 1692 (WA App. Div. 1, 2003); reported at, 117 Wa. App. 1082, 2003 Wash. App. LEXIS 2213 (WA App. Div. 1, 2003)

COMMENTARY: A forensic handwriting expert testified that Bean wrote some bad checks

1498. *State v Folsom*, 2003 Wash. App. LEXIS 2394 (WA App. Div. 2, 2003); reported at 118 Wn. App. 1077, 2003 Wash. App. LEXIS 3243 (WA App. Div. 2, 2003)

COMMENTARY: A letter in question was sufficiently authenticated for admission into evidence when a handwriting expert testified it was highly probable that defendant had written it.

2004

1499. *State v Bailey*, No. 30258-6-II (WA Ct. App. 2 Div. 2004)

Sergeant Joe Upton testified as an expert in documents and handwriting. He identified defendant as writer of the endorsement on a forged check but could not say he traced the payor signature. Since both forgery and theft were charged and convicted out of the same act, there was double jeopardy, and the conviction was reversed and remanded.

COMMENTARY: The state had conceded to the double jeopardy problem before the decision to reverse and remand.

1500. *State v Hosier*, 124 Wn. App. 696, 103 P.3d 217, 2004 Wash. App. LEXIS 3047 (WA App. Div. 1, 2004); review granted, 155 Wn.2d 1011, 122 P.3d 186, 2005 Wash. LEXIS 821 (WA 2005); affirmed en banc, 157 Wn.2d 1, 133 P.3d 936, 2006 Wash. LEXIS 424 (WA 2006)

“P4 Smith notified the police [of sexually explicit notes he found]. Based on a comparison of the notes with samples of Hosier’s handwriting on file from his registration as a sex offender, a handwriting examiner opined that there was a 75 percent chance that Hosier had written the notes. Smith was worried that the notes were intended for his 13-year-old daughter, M.S., who frequently played on the lawn and had been playing on the lawn earlier that day.”

Other notes were found by others, all describing desired sexual acts with young girls. The texts are given. The legal question was legitimacy of court ordered handwriting samples to be collected from defendant’s home after expert had identified him as writer. Court wanted a more assured conclusion.

“P39 Hosier also asserts that there existed ‘no basis for believing that forensic evidence could tie a particular marker’ to the notes he had written. The record supports the trial court’s conclusion that there was probable cause to issue the warrant. Hosier provides no authority or evidence to support his assertion that forensic science would be unable to link the materials found in a search of his residence to the notes found at the Smith residence, the day care, or Bartells.”

COMMENTARY: Because they were so obnoxious, I could read only two samples of the defendant’s notes that he left where young girls might find them. Such a man must be radically ill in mind, emotionally immature, and callous concerning the trauma his notes would cause youngsters.

2005

1501. *Hoechlin, et al., v Urbiha, et al.*, 2005 Wash. App. LEXIS 850 (WA Ct. App. Div. 2 2005)

Urbiha was granted summary judgment since she was a witness, whether expert or not. She had acted as handwriting expert in identifying plaintiff as writer of false mail orders whereby neighbors received unsolicited merchandise. Criminal prosecution was dismissed, since Rosemary Brehm of state crime lab and Jim Green said Hoechlin could not be identified or eliminated as writer.

Urbiha was properly dismissed as defendant but it remained to be determined whether she acted in good faith in submitting to prosecutor's office exemplars that state lab people had not seen. After that, her request for reimbursement of her costs could be considered.

COMMENTARY: Though there was no expert testimony in this case, there was in the underlying case.

2006

1502. *In Matter of Adoption of B.D.W.*, No. 23001-5-III. (WA Ct. App. 3 Div. 2006)

The natural father, Junior, brought motion to block the adoption of his child by the grandfather. Junior's attorney presented expert testimony that the signature on a consent form was not written by Junior. Junior testified by phone from the U.S. Air base in Japan where he was stationed that he had not signed the consent form since he was on active duty in Japan on the day in question. Two forensic document examiners for grandfather testified that he had signed. Junior asked if the sergeant who was with him could testify by phone, but the objection of non-disclosure of the witness was upheld. A request by Junior for a continuance so that the sergeant, whom he had disclosed but who was called to duty, could testify was denied. Junior lost the motion and was ordered to pay grandfather's costs. The appeal court cited a special provision of law that said Junior's motion for reconsideration should have been granted in the interests of substantial justice. The vagaries of military operations prevented the leave that Junior and his witness, the sergeant, anticipated so that they could give live testimony and present military records. The case was remanded and ordered to be heard by a different judge lest bias affect the hearing.

COMMENTARY: It would be interesting if Junior did prove his physical absence through military service on the other side of the world. If perchance he did, how would the two document examiners for grandfather explain their assurance he was on this side of the world at the same time?

1503. *State v Robinson*, 2006 Wash. App. LEXIS 1782 (WA App. Div. 1, 2006); reported at 134 Wn. App. 1037, 2006 Wash. App. LEXIS 2230 (WA App. Div. 1, 2006)

Defendant was convicted of domestic violence. Victim claimed she went to his place, and while they made love she bit him, after which he beat her up. She escaped and called the police on her cell phone. In defense he said victim arrived at his place already beaten and attacked him when he tried to hug her. He also presented a recantation purportedly written by her.

“In the defense case-in-chief, Robinson presented the testimony of Virginia Rider, a graphologist. A graphologist is someone who examines handwriting [*4] to determine personality traits of the writer, testified that she found significant similarities between the statements [recantation] and known samples of Adams’ writing and concluded that Adams did write the statement. On the stand, Rider corrected her earlier written report, in which she had written that there were significant differences between the two samples.

“Before the defense rested, the State informed the court that it intended to call three rebuttal witnesses: Adams, Garza, and Tim Nishimura. Nishimura was a forensic document examiner at the Washington State Patrol Crime Laboratory.... Nishimura testified that the quality of the photocopied documents Rider examined was too poor to be useful for forensic [*5] examination. In Nishimura’s opinion, Adams did not sign the statement, and Adams probably did not write the statement. Nishimura also stated that Rider’s training and credentials were of dubious value for forensic document examination.”

COMMENTARY: Defense objected to the rebuttal witnesses on the basis they properly should have been called in the State’s case-in-chief. However, the issue they addressed arose only in the defense’s case-in-chief.

Defense counsel should have objected to the testimony by Nishimura about Rider’s qualifications which are the sole concern of the court. No expert is an expert on the qualifications of other experts, a matter that the NADE Code of Ethics makes explicitly unethical for its members to opine about. I believe only presumptuous arrogance combined with ignorance of the law would inspire private persons or organizations to presume to dictate to courts of law what is or is not legally qualifying of any witness. Likewise, I suspect it is only a deep-seated inner nagging about one’s own inadequacy that compels such bullying of others.

If Nishimura had the same materials as Rider, his opinion was no better than he said hers was. On the other hand, if he had other and/or better material, Rider was denied what was in the possession of Nishimura, and he would be a bit questionable in criticizing her for doing the best she could, while by his own testimony he could have done no better and/or the prosecution team withheld possibly exonerating material from the defense..

2007

1504. *State v Hutton*, 2007 Wash. App. LEXIS 1059 (WA App. Div. 2, 2007); reported at 2007 Wash. App. LEXIS 1156 (WA App. Div. 2, 2007)

“Hutton argues that the trial court abused its discretion ‘when it found that the

signature on the Consent to Search form was Mr. Hutton's.' Appellant's Supp. [*12] Br. at 3. Hutton also argues that the trial court abused its discretion when it did not allow Hutton's handwriting expert to testify regarding the signature on the consent to search form. Because we find that the search was lawful and that a *Ferrier* warning was not required, both issues are moot."

Under *State v Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998), Defendant was informed that he did not have to consent to the search and could limit the scope of the search or revoke his consent at any time.

COMMENTARY: This is another case that is included lest someone mistakenly think the expert was excluded because of problems with reliability. Also, it is another case that illustrates there are several avenues by which one can attempt to exclude an opposing expert. Why not keep a handy list of all that are available in your jurisdiction and systematically scan them when faced with a new expert? When attorneys try a technique that on its face is written "ineffective effort," the standing of the opposing expert is only enhanced.

2008

1505. *State v Sams*, No. 36259-7-II (Ct. App. WA Div. 2, 2008)

Detective James Dunn testified about his investigations in Sams' use of another's identification to steal that other's money, but he did not testify to a handwriting comparison between Sams' signatures and the writings on the checks in question. Footnote 2 tells why:

"At trial, Detective Dunn looked at still photographs taken from freeze frames of the casino videotape and identified Sams as the woman in the video photographs. Dunn also testified that he had not compared the handwriting on Crowell's photocopied check with a sample of Sams' handwriting because the photocopy was somewhat degraded, making it difficult to make a comparison, which is usually done with original documents. Nor did he seek a copy of Sams' handwriting to obtain a handwriting analysis."

COMMENTARY: Copies might be so degraded as not to offer any assistance in making an identification; however, the poorest copy might assist in making an elimination by demonstrating a significant characteristic that must be credited to the original writing but is not found in the disputed writing. It cannot go the other way, since what is in the disputed but not in the copied exemplar writing could well be a loss caused by the copying process.

2010

1506. *State v Rancipher*, No. 38244-0-II (Ct. App. WA Div. 2, 2010)

A store fired Rancipher as a loss prevention manager. His replacement discovered Rancipher had submitted false refund slips to reward employees who prevented loss by

theft. He would submit the claims and was given cash to distribute to the proper employees. His defense counsel retained Robert Floberg who said a number of refund slips were in Rancipher's handwriting. Defense attorney designated Floberg as a witness at trial and submitted his report to the prosecutor, who then named Floberg as a state witness. Whereupon defense counsel moved for a *Frye* hearing to find handwriting analysis to be unreliable and inadmissible. Since Washington courts had already held it admissible, no *Frye* hearing was required.

COMMENTARY: First, defense counsel would have done better to keep Floberg as a confidential consultant rather than contribute to his client's sure conviction. Second, the case report does not indicate that the prosecutor rubbed it in by arguing defense counsel himself had already designated Floberg a witness at trial so he must have already considered his work reliable and admissible. It seems it was a parallel to criminal defendants who confess to the crime then appeal their conviction as unfounded.

1507. *State v Rekdahl*, 2010 Wash. App. LEXIS 280 (WA App. Div. 2, 2010)

“¶¶11 At trial, the State admitted Rekdahl's address book, which contained 'Newman' handwritten on the last page. 7 RP at 795. A handwriting expert also testified that Rekdahl's handwriting matched notes found inside an atlas. The atlas had a map marked that depicted the area of town in which Newman's house was located. A jury found Rekdahl guilty on all four counts and found that he used a firearm for each count.”

COMMENTARY: Newman owned the house which defendant and two companions forcefully entered, beating Newman and killing one of his guests. Convictions were affirmed.

2011

1508. *OEC Freight (NY), Inc., v Philip Whitney, Ltd., and Philip*, Case No. 09-CV-2489 (U.S. DC E.D. NY 2011)

OEC claimed Philip was personally responsible for a debt owed by Whitney. The contested facts were whether Philip had signed a personal guaranty for the debt and what amount was owed to OEC. The fly in the evidential ointment was this: “The guarantee introduced into evidence was a fax copy received by OEC. The original presumably remained with Philip Whitney, but was not produced. Defense counsel represented that neither he nor Philip ‘ha[d] the slightest idea’ where the original was.”

OEC took its best shot: “Because no one at OEC saw Philip sign the guarantee, OEC's case for genuineness relied on expert testimony. Its ‘questioned-document’ expert, Thomas Picciochi, gave a ‘qualified opinion that [the signature on the guarantee] was likely a genuine signature.’ Trial Tr. 73. He based his opinion on a comparison of the signature on the guarantee with several signatures known to be Philip's. From that comparison, Picciochi found eight characterizing features of Philip's typical signature. See Pl.'s Exs. 17-24. As he explained, ‘the more features [there are], the less likely that

they can be randomly done by another person.’ Trial Tr. 83.”

Philip took his best two shots: “Although Philip testified that he did not sign the guarantee, he did not offer a definitive explanation for how his signature (or something very like it) appeared on the document. Instead, his expert, Jeffrey Lubner, testified that the quality of the fax copy prevented him from determining whether the signature was genuine, a tracing (or other forgery), or a rubber stamp.

“Seizing on that last possibility, Philip testified that the company kept a signature stamp, but that its use was not authorized here.”

Other evidence precluded its use by anyone except Philip and Whitney’s CFO.

Given the balance of all the evidence, OEC’s best shot hit the mark.

COMMENTARY: The case report offers several points that could spark a lively debate, and here are a selected very few. If Picciochi relied on common characteristics, might he be challenged on any inevitable non-common characteristics a fax would introduce? If he says the fax introduced them, might he be challenged on why his eight were not produced by the fax? If Lubner was reasonable in declining to express a positive opinion of either an identification or elimination, ought the court to have ruled that OEC had not met its burden and technically could not do so? Or should Whitney have lost for failure in the duty, if there be one, of preserving a document reasonably expected to be needed for the very purposes for which it was created and entrusted to it? At least these queries, for which I can offer no answer, might spark a line of enquiry if you, good reader, find yourself in the position of any of the protagonists in *OEC Freight*.

Every good non-fictional story carries a moral just as good fables do. Here it is that one had best safeguard every important original document or as fine a copy as possible. If one be dishonest, the moral (but an immoral moral) is to ditch the original when it proves to be a costly burden or even just a bothersome inconvenience. In the latter case, there enters in the best evidence rule, which unfortunately often seems to be like a toothless Rottweiler.

1509. *State v Silvis*, No. 66961-3-I. (WA Ct. App. 1 Div. 2011)

“Brett Bishop, a documents examiner with the Washington State Patrol, testified that he conducted a handwriting analysis of the checks, using writing samples from Finley and Silvis. For eight checks, Bishop determined that Finley probably did not sign the check or write the payee information, but he could neither confirm nor exclude Silvis as the signer or the writer on those checks. For one of the eight checks, Bishop found indications that Silvis wrote the payee information. His analysis of four checks yielded inconclusive results. And his analysis of three checks indicated that Finley did not sign them. Bishop concluded that only one check appeared to have been written by Finley. He explained that a document examiner has difficulty determining the author of a simulated signature because the author masks her own handwriting in the attempt to copy another’s.”

COMMENTARY: Identifying the writer of a simulation is generally considered

the most difficult task in handwriting expertise. The less the amount of simulated writing the more difficult the examiner's task, because the length of the writing permits the indeliberate introduction of genuine writing traits. The more habitual these are, the more readily they will show forth. Additionally, the use of non-habitual traits copied from another's writing style requires skill in observation, talent in altering one's penhold and other mechanical aspects of writing, so that any lapse of attention will tend to cause lapse back into one's own style of writing. The momentary recovery from such lapses causes a discernable discontinuity in the writing.

2012

1510. *State v Guerrero*, No. 65817-4-I. (WA Ct. App. 1st Div. 2012)

Brett Bishop testified that the judge's signatures on a 1994 dismissal document for defendant were "cut and pasted" from the 1984 judgment and sentence for defendant. It was stipulated that neither defense nor prosecution could find the former attorney nor even if he were alive or dead.

COMMENTARY: See the earlier discussion of the same issue in *U.S. v Brewer*, 2002, U.S. Dist. LEXIS 6689; 2002 WL 596365 (U.S. DC N.D. IL 2002) Memorandum Opinion and Order. Guerrero could have done better with the questionable perspicacity of the anti-expert experts provided Washington State trial judges are as gullible as at least one federal trial judge appeared to be.

1511. *State v Hennigan*, No. 41815-1-II, Consolidated with No. 42142-9-II. (WA App. 2 Div. 2012)

COMMENTARY: This is a case of routine admissibility which, being a criminal case, should have been a case of routine disallowance of the supposedly expert evidence. Whether deliberately or unawares, the case report characterizes the handwriting expert's evidence as merely suggestive. Immediately after one such characterization, comes this interesting passage:

"Accordingly, because the State's evidence that Hennigan fraudulently used Malich's check was overwhelming, we hold that the trial court's abuse of discretion in admitting evidence that was irrelevant and whose prejudice outweighed its probative value was harmless because it did not prejudice the outcome of Hennigan's trial. Thus, we affirm Hennigan's convictions."

Thus, it seems once more that, in order to prove its case, the prosecution needs evidence it asserted to be relevant and not improperly prejudicial. Upon conviction and appeal, the same prosecution argues that the same evidence was not needed for conviction and was harmless, however irrelevant and improperly prejudicial it was. As I may have intimated elsewhere in this text, such behavior has an aroma of duplicity wafting from it.

2013

1512. *State v Hendrickson*, No. 31355-7-III (Ct. App. WA 3 Div. 2013)

“Ms. Hendrickson was charged with various offenses including three relating to her former boyfriend, G.R. The jury determined that Ms. Hendrickson did commit cyberstalking and identity theft with G.R. as the victim. The jury acquitted Ms. Hendrickson of stalking G.R. Evidence was introduced at trial from document examiner Ronald Emmons of the Oregon State Crime Laboratory. He testified that Ms. Hendrickson had been responsible for forging credit card applications in G.R.'s name. He issued his opinion without reviewing any handwriting exemplars from G.R. An examiner for the Washington State Crime Laboratory had been unable to reach a definitive opinion.

“After trial, Mr. Emmons was investigated for failing to follow established quality assurance procedures. An external review concluded, *inter alia*, that Mr. Emmons's findings in Ms. Hendrickson's case were not adequately supported and ‘were not accurate within the generally accepted practices of the Forensic Document Profession.’ Clerk's Papers (CP) at 45.

“The prosecutor advised defense counsel of the Oregon findings. Defense counsel filed a motion for a new trial on the identity theft count due to the evaluation of Mr. Emmons's work in this case. The trial court denied the motion without hearing argument, reasoning that the testimony from Mr. Emmons addressed only the stalking conviction and that even if it had applied to the identity theft, the error was harmless in light of the overwhelming additional evidence on that count.”

COMMENTARY: As I am writing these comments, to my knowledge the final report of the investigator of the Oregon facility where Emmons worked has not been released, nor has Emmons had opportunity to respond.

1513. *State v Nguyen*, No. 42901-2-11 (Ct. App. WA 2 Div. 2013)

“Brett Bishop, a Washington State Patrol Crime Lab forensic scientist and ‘[h]andwriting expert[,]’ testified that after examining about 300 checks written on the Griffins' bank accounts, Bishop concluded that (1) ‘Frances Griffin *probably* did not write [any of the five] questioned checks and [they] are probably simulations,’ and (2) it appeared that someone had been trying to copy her writing. 1 VRP at 116 (emphasis added).[6] Having compared the writing on these checks to Nguyen's writing, Bishop testified that the person writing the checks had been attempting to sign someone else's signature, and ‘the writing characteristics in themselves [were] disguised’; thus, he could neither identify nor exclude Nguyen as the writer. 1 VRP at 119.”

Nguyen testified as his only witness, admitting he had forged two of the checks, giving an explanation for not all of the others which he denied forging.

COMMENTARY: Bishop gave a modest statement which, if Nguyen had not testified, defense counsel could have argued even the expert had a reasonable doubt about the fact of forgery. This compilation contains a number of cases where Defendant admits to having committed the crime and then appeals the conviction as unsupported by the evidence. It seems to me that Courts of Appeal could save much time and record keeping

if they simply state the conviction is upheld because Defendant provided sufficient evidence for conviction beyond a reasonable doubt. One paragraph would suffice.

2014

1514. *Applegate and Applegate v Washington Federal Savings, et al.*, No. 43043-6-II. (Ct. App. WAS 2014)

“The Applegates sought to admit the expert testimony of Robert Floberg, a forensic handwriting examiner, to support their allegations of forgery: that Charles forged Richard's signature on the certification that authorized the \$108,172.00 draw check and that Karen Applegate's signature on the residential construction contract was forged. The trial court excluded this witness as a discovery sanction for the Applegates' failure to timely disclose Floberg's opinion.”

COMMENTARY: The exclusion was not an abuse of discretion since there had been previous discovery violations by Plaintiffs.

1515. *Arroyo v Fischer*, No. 31586-0-III (Ct. App. WA 3 Div. 2014)

“The only handwriting expert called to testify at trial expressed his opinion that there was a strong probability that Dr. Arroyo's purported signature on the quitclaim deed was a forgery.”

COMMENTARY: The parties had both an intimate relationship and 50/50 investment in real estate. Arroyo asked out but Fischer refused to buy her out or be bought out. Thirty years later the trial judge found the quitclaim deed to have been forged. The principal focus is on monetary awards based on equity. At least in this case it seems love conquers all but financial interests.

1516. *State v Farnsworth, Jr.*, No. 43167-0-II (Ct. App. Div. 2 WA 2014)

Farnsworth was convicted for helping another man to rob a bank. He wrote the hold-up note according to prosecution handwriting expert and adjusted a wig used as a disguise in the hold-up. Conviction for robbery was overturned but that of first degree theft was affirmed. His backing out of actually participating in the hold-up was of no moment since he had helped the perpetrator.

COMMENTARY: Another issue raised on appeal was comment by a detective who tried to take court ordered exemplars from Farnsworth testified that he refused to give the exemplars but talked of other complaints he had. The appeal claimed that the detective went beyond the permissible comments regarding refusal to write and gave interpretations of the behavior. There was no error there.

Between the majority decision and the dissenting opinion the case shows how “reasonable fact finders” can find support in courts of appeal for either of two contrary legal opinions. This might help one understand how justices can decide any case with contrary interpretations of the same record. Another point is that Defendant is credited

with failure to object to claimed errors during trial and so lost right to assert them on appeal. Then he is credited with inadequacies in the appeal itself. As we have seen in other case reports, should he assert ineffective assistance of counsel, then most likely what is a personal mistake, when credited Defendant, magically becomes a shrewd, but unfathomable, tactic when credited to his legal counsel.

An item of interest is the delineation of the reasons why the actual robber testified against Farnsworth. If you need to motivate a stool pigeon, the list could serve as a guide to winning the bird over since the most effective selling points seem to be included.

2015

1517. *Johnston v Torkild, et al.*, No. 70719-1-I (WA Ct. App. Div. One 2015)

“The Torkilds next contend the trial court erred when it failed to consider the testimony of their handwriting expert, Hannah McFarland. McFarland testified that John Johnston's signatures on the documents that Peter gave to Darcee at the first meeting were not genuine. The trial court found that McFarland qualified as an expert but declined to consider the testimony in its decision. We review the trial court's admission or exclusion of expert testimony for an abuse of discretion. *Philippides v. Bernard*, 151 Wn.2d 376, 393, 88 P.3d 939 (2004).”

COMMENTARY: McFarland was qualified as a handwriting expert, but the documents ended up not being relevant to the law suit. McFarland is a certified member of NADE.

1518. *State v Jenkins*, No. 70838-4-I (Ct. Ap. WA Div. 1, 2015)

Jenkins' conviction for forgery was affirmed.

“The evidence at trial established that on July 31, 2012, Jenkins entered a Wells Fargo bank in SeaTac and attempted to cash a check written for \$1,830. The bank teller, Lashanya Topps, quickly became suspicious. Topps testified that Jenkins was unusually talkative and appeared anxious and ‘just kind of shifty.’ Jenkins claimed the check was payment for cleaning rental units, but in Topps' experience, the check amount was unusually large for that kind of work. The check itself was unusual in that it was business-size, but it bore a personal name, not a business name, and a handwritten payee and amount rather than the usual typed information.”

A deputy submitted the check and a handwriting sample from Jenkins for analysis by the State's forensic scientist, Andrew Szymanski, who could only say Defendant wrote the endorsement.

COMMENTARY: I reproduce the above paragraph to show intelligent initiative on the part of the teller. I once met a lady who was a teller in a bank. She said a forgery never got past her because she could pick up nuances of behavior that alerted her to look more closely at a check.

1519. *State v Njonge*, No. 63869-6-I (Ct. App. WA Div. One 2015)

Njonge was convicted of second degree murder of the wife of a patient in a nursing home where he worked. He had received a cash award based on a form describing his good service as an employee. A handwriting expert testified that the victim had not filled out and signed the form, but the expert could only say there were indications that Njonge had. This helped establish motive for the murder and the first prong for admissibility of prior bad acts because the misconduct had in fact occurred. No one but Njonge could benefit from the forgery.

COMMENTARY: The proof of prior bad acts need only be established by a preponderance of the evidence, and so the evidence from the handwriting expert was sufficient for its purpose.

The case also illustrates that if one comes up with an excuse, it had better be based on reality. Njonge's DNA was found under the victim's broken and bloodied fingernails. He said she had often run her fingers through his hair and remarked it was "kinky." Family members testified the victim was not a "touchy-feely grandma" and had never used the word "kinky."

3. *Washington Supreme Court.*

2004

1520. *In the Matter of the Disciplinary Proceeding Against Ricardo A. Guarnero, Attorney at Law*, 152 WA2 51, 93 P3 166, 2004 WA LEXIS 512 (WA 2004)

In a factually complex case of disbarment, the central issue was whether Guarnero forged his client's signature, faxed it to the trial judge and opposing counsel, then was deceitful in covering the forgery. The client denied having made the signature in question when she saw it for the first time at a later date, and a handwriting expert testified at the disbarment hearing that the signature was either an imitation or tracing.

COMMENTARY: The Supreme Court of Washington upheld the disbarment, citing the handwriting expert's testimony as part of the evidence.

2013

1521. *In the Matter of the Disciplinary Proceeding Against Rosaura Del Carmen Rodriguez*, No. 200,960-3 (WA 2013)

A handwriting expert testified that documents submitted by Rodriguez to a court of law bore forged signatures. This was one element of a pattern of practice that required disbarment.

COMMENTARY: The Supreme Court of Washington took the attorney's dishonesty quite seriously and worthy of no mitigation in the penalty: "We recognized in *Whitt* that the self-regulating nature of the bar makes false testimony during the

disciplinary process ‘one of the most egregious charges that can be leveled against an attorney.’ 149 Wn.2d at 720. Such false testimony subverts efforts to police and remedy misconduct and ensure public confidence in the legal system. *Id.* Like the Board, we see no sufficiently compelling reason to impose less than the presumptive sanction for Rodriguez's repeated acts of dishonesty.”

However, when attorneys shop for expert opinions to support an otherwise unsupportable false case, and when an expert is readily found to give the required false support for a nice fee, there is no downside. On the contrary, others take the opportunity to claim quite incorrectly that the solution is to give them, as disinterested academics and/or computer lab researchers, substantial funds to attempt to discover the long ago discovered fundamentals of forensic expertise. When you see a forensic science expert become a multimillionaire, you can rightly suspect the expertise is principally, if not mostly, in other than either science or forensics.

2015

1522. *Alexander and Alexander v Capital One, N.A., et al.*, No. 71952-1-I, Consol. with No. 72350-2-I (Ct. App. WA 2015)

The case report opens: “Gary and Diane Alexander lost their property in a nonjudicial foreclosure sale. They then sued their lender and other entities for wrongful foreclosure, fraud, negligence, slander of title, declaratory relief and violations of the *Deeds of Trust Act* (DTA), *Chapter 61.24 RCW*, and the *Consumer Protection Act*, *chapter 19.86 RCW*. The superior court dismissed the Alexanders' complaint on summary judgment and awarded respondents attorney fees and costs under the *Deed of Trust*, *RCW 4.84.185*, and *CR 11*. We affirm.”

Later we are told: “The complaint rested in part on the declarations of two alleged expert witnesses—Michael Wood and Dr. James Kelley. Wood stated in his declaration that he was ‘a mortgage document examiner.’ He listed his examiner qualifications as 20 years of experience in the mortgage industry, ownership of a company called ‘DocAnalysis,’ and the fact that he ‘[s]tudied under’ a forensic document examiner and ‘had the benefit of his knowledge and guidance for three years.’” The superior court declined to qualify Wood and Kelley as experts due to deficiencies in their qualifications and declarations. Additionally, Wood’s opinions were speculative and legal

Kelley comes in for further analysis as to his deficiencies, including two prior occasions when courts refused to qualify him as an expert. A search of this text for “Kelley” will lead you to other cases mentioning him. Be sure you do not mistake another Kelley for him.

COMMENTARY: One must be aware that the term “document examiner” which is used both for the traditional questioned document examiner, commonly referred to as a handwriting expert, and for an expert in ascertaining whether all documents and information are properly contained in a file regarding a real estate loan. Wood seemed to

have claimed a combined expertise in both fields. Additionally, he claims an expertise whereby he examines high resolution images of documents scanned in color to determine whether from the color and relative quantities of pixels of different colors whether the original document bears a genuine or forged signature.

It would be interesting whether or not recognized and qualified practitioners in the last claimed expertise of Kelley would confirm his theories and methods. At least he has had difficulty persuading courts of law his practices were reliable. They seem to amount to novel scientific theories and methods requiring the thorough enquiry such matters demand. A major red flag is that the proffered expert either seems to be the only one employing some special theory, method or equipment or claims to have done basic scientific or technical research specifically for the instant case.

Two thoughts: In qualifying your expert, or being qualified if you are an expert, systematically cover all pertinent elements, particularly the one you think would never be an issue. A more sagacious opponent would jump on that one, making you fight an uphill battle from then on. Secondly, survey all applicable rules and guidelines from both law and the expertise involved to be sure each is addressed as if it were the key element in qualifying an expert for the instant case.

Please be careful not to confuse James Kelly of Georgia Bureau of Investigation with Dr. James Kelley. I came across two other cases on the Internet with declarations by the latter Kelley, but I could neither retrieve the declaration nor find the resolution of the cases. In case you can do so with your resources, these are the two cases:

1. The United States District Court, Western District of Washington *In Re: Jonson v. Flagstar Bank fsb, et al.*
2. U.S. Bankruptcy Court, Northern District of California, Division Five in Adversarial Case # 10-05245, BK Case # 08-55305 ASW, Chapter 11; *Kelley v. JPMorgan Chase Bank NA, Washington Mutual Bank, and Does 1-20.*

1523. *State v Ozuna*, No. 90666-1 (WA 2015)

“[W]hen Ozuna was moved from one prison cell to another, a corrections officer found two unstamped, unsealed letters in his possession. The officer confiscated the letters because Ozuna was not allowed to have the letters in the new cell and because the envelopes in which they were found listed a return address for another inmate, Marc Cole. A handwriting expert testified that Ozuna wrote the letters. Ozuna later conceded he wrote the letters.” Neither letter had been mailed, but one was to a fellow gang member to kill a former gang member who had testified against Ozuna.

COMMENTARY: A case of wondrous reasoning why the letter of threat, that had never been provided to anyone, not even the officer who had confiscated it, had yet been communicated to someone by Ozuna. Ozuna’s conviction of threatening a former witness against him was upheld. The letter does make clear that to Ozuna’s peculiar logic the snitch, and not his own criminal deed, was responsible for Ozuna’s imprisonment.

VV. WEST VIRGINIA.

1. *West Virginia Trial Courts.*

1524. *Daryl's Cars, Inc., v Bunner*, No. 04-C-614 (Cir. Ct. Wood County WV 2009)

In a mildly complex business dealing, Plaintiff claimed Defendant had signed an agreement which Defendant denied. Harold F. Rodin, document examiner, testified the signature was false while the court determined otherwise.

COMMENTARY: It seems a big factor in the finding was that Rodin used exemplars that were all made after the suit was filed. A number of cases in this compilation have handwriting experts using *post litem motam* exemplars. Some experts even have their clients make such exemplars under the direction of the expert, as did Gerald McMenimin in having the Ramseys copy out the alleged kidnaping note. Even if one had written the original note, one could not copy it by hand without several mistakes of some sort, so it was a sure fire way to find dissimilarities in spelling, punctuation, etc. Then there is the problem of a guilty person introducing deliberate dissimilarities and a nervous person introducing unintended ones.

2. *West Virginia Supreme Court of Appeals.*

This is West Virginia's sole court of appeals.

1993

1525. *State v Nelson*, 436 S.E.2d 308, 190 W.Va. 73 (WV 1993)

At page 309: "Because the handwriting expert for the state lacked sufficient evidence to conclude that the signature on the questioned form was that of Ms. Nelson, the court, on the state's motion, dismissed the forgery and uttering counts at the beginning of trial. Ms. Nelson was convicted for offering the fraudulent voter registration card in violation of *W.Va.Code*, 3-2-42 [1990]."

At page 310 the expert's terminology is given: "The prosecution's handwriting expert, K. H. McDowell, testified that he determines whether a particular writing was prepared by the person in question on a four-level rating system: reasonably certain; probable; possible; and cannot be eliminated."

At page 311 these details are added: "Ms. Ison testified that she gave the Appellant all the information by phone, but had no further involvement in completing or filing the application. In addition, a handwriting expert, Trooper K. H. McDowell, testified that he examined the handwriting on the registration card and was able to conclude that the Appellant filled out the hand-printed areas of the card based on the Appellant's handwriting samples. Trooper McDowell testified that Ms. Ison probably did not sign the registration card and the trooper could only conclude that the Appellant may have signed Ms. Ison's name to the card."

COMMENTARY: While it is commendable for the prosecution to move for dismissal of some of its own charges, I believe it was a rather dinky thing to prosecute defendant, given that she was accommodating the request of Ms. Ison for assistance. Given the anemic expert evidence, if I had been a juror, any assertion by defense that Nelson honestly believed she had been given permission to sign for Ms. Ison would have persuaded me to vote not guilty.

1526. *State v O'Donnell*, 433 S.E.2d 566, 189 W.Va. 628 (WV 1993)

Defendant came home one evening with two other men and suggested they all three have sex with his wife. She complained that the sex was forced on her and not consensual on her part. After his conviction, defendant received a letter of good-bye forever from his wife and maintained it showed she had consented to the group sex. Both his and the prosecution's handwriting expert said the wife had written it, and the judge said there was a "strong probability" that she had. However, he was denied a new trial on basis of newly discovered evidence. This was ruled to have been an error by the trial judge, and a new trial was granted defendant upon his appeal.

COMMENTARY: Every gentleman would agree that to say defendant was a cad would be to give him an undeserved compliment.

1998

1527. *Midkiff v Huntington National Bank West Virginia*, 511 S.E.2d 129, 204 W.Va. 18 (WV 1998)

The handwriting expert is confined to a very short footnote:

"[3] Midkiff produced evidence tending to prove that Nancy Midkiff forged Midkiff's signature, including the testimony of a handwriting expert. The jury determined that Nancy Midkiff forged Midkiff's signature without his permission or knowledge."

COMMENTARY: At least it was not the shortest footnote nor the last one.

2013

1528. *State v Bruffey*, No. 12-0189 (WV 2013)

COMMENTARY: An FBI handwriting expert said Bruffey wrote a hold-up note.

2015

1529. *Truman-Gilmore v Gilmore*, No. 14-0194 (Sup. Ct. of Appeals WV 2015)

In a divorce case, the trial court ordered wife to pay husband, Gilmore, \$2,069,000 based on a prenuptial agreement. Wife claimed her signature and the notary's signature were forged. A document examiner testified the signatures were genuine, which the trial court accepted. However, the Supreme Court of Appeals found the prenuptial agreement

was invalid because it failed to state all properties covered and their true value, so the case was remanded for decision without reference to the agreement.

COMMENTARY: Sometimes an expert's uselessness is not due to inherent merit.

2016

1530. *Lawyer Disciplinary Board v McCloskey*, No. 14-1119 (WV 2016)

COMMENTARY: A forensic document examiner, Kenneth Wayne Blake, testified that McCloskey made signatures in question.

WW. WISCONSIN CASES.

1. Wisconsin Trial Courts.

I have no case reports for Wisconsin trial courts.

2. Wisconsin Courts of Appeal.

2000

1531. *State v Czarnecki*, 2000 WI App 155, 237 Wis. 2d 794, 615 N.W.2d 672, 2000 Wisc. App. LEXIS 717 (WI App. 2000)

"P6. In response to Czarnecki's first argument, we disagree with his claim that the evidence at trial did not support the facts alleged. To the contrary, we find the evidence sufficient for a reasonable jury to infer that Czarnecki signed the checks as another person. For instance, originals of the checks were exhibits available to the jury. The jury reviewed the checks and was allowed to make its own assessment of the indecipherable surname scrawl. Even though Czarnecki insists that there is no proof that he did not sign 'Czarnecki' when endorsing the check, the first letter [*6] of the surname scrawl is clear; it is the letter 'D.' The jury could have easily noted the obvious distinction between the written letters 'D' and 'C.' Furthermore, although the State's handwriting expert could not decipher the surname on the endorsements, this fact is inconsequential because that was not the witness's proclaimed expertise. The expert testified about his comparison of Czarnecki's handwriting sample and the handwriting on the checks. He concluded that the handwriting was the same. When asked about the indecipherable scrawl in place of the surname, the expert testified that 'one of the characteristics within handwriting [is the] tail off on the end of a signature..... In some cases that's an indication of genuineness, other cases it may be a form of disguise.' We conclude that sufficient evidence supports the jury's inference that Czarnecki signed the checks as another person."

COMMENTARY: Since deciphering illegible letters was outside the expert's personal expertise, it ought not have been ventured into. In another situation, an astute

defense attorney might have successfully argued the expert be disqualified. The logic of indecipherableness having only one of two effects, each supportive of the prosecution's theory, suggests other than an objective and unbiased witness.

2006

1532. *State v Knox*, No. 2005AP298-CR. (WI Ct. App. 1st Dist. 2006)

COMMENTARY: Paul Janicki, the Milwaukee Police document examiner, identified his report that signatures on absentee ballots that did not match those on the absentee request forms

2007

1533. *Landmark Credit Union v Borum*, 2007 WI App 251, 306 Wis. 2d 449, 742 N.W.2d 76, 2007 Wisc. App. LEXIS 942 (WI App. Dist. 1, 2007); review denied, 2008 WI 40, 2008 Wisc. LEXIS 226 (WI 2008)

Borum presented handwriting expert testimony that papers purporting to bear her signatures were forged. The court ruled the signatures genuine. The appeal court said that, if the trial court had conducted its own handwriting comparison, it is upheld. However, if it did not, it should hold hearings to resolve the issue if necessary.

COMMENTARY: The appeal decision is a bit more complex than that, so it might be of interest to read it. The report does state explicitly that the handwriting expert was found qualified.

1534. *State v Kamlager*, No. 2006AP1103-CR. (WI Ct. App. 2nd Dist. 2007)

Document examiner Jane Lewis testified. Kamlager's attorney stipulated to her findings.

2014

1535. *State v Brown*, Appeal No. 2013AP1332-CR (Ct. App. WI Dist. 1, 2014.)

“¶10 A handwriting expert also testified. The expert stated that he had examined the letter, handwriting samples from both Brown and Carson, and letters taken from Brown's cell in which Brown had been practicing writing numbers and letters. The expert testified that it was ‘inconclusive’ whether Brown had written the letter, but that Carson ‘probably did not write the letter.’”

COMMENTARY: Argument on appeal that defense trial counsel should have attacked the handwriting evidence would have not overcome all the other evidence.

2015

1536. *Foxwood Estates Homeowner's Association, Inc., v Foxwood Estates*, Appeal No. 2013AP1103 (Ct. App. WI Dist. II 2015)

The developer of the Foxwood Estates was ordered to convey title to disputed lands to the Association based on various representations made during sales of houses to the residents. One piece of the evidence was by a document examiner who testified that the words “final plat” on a map given to one buyer were written by the developer.

COMMENTARY: The developer had told different stories about the eventual fate of the land in dispute on different occasions to different buyers. The moral to this story is to settle on a single, believable lie for any given complexity one faces. Better yet, don’t lie and don’t create complexities where a lie would appear to be a solution

1537. *State v Johnson*, Appeal No. 2014AP2301-CR (WI Ct. App. Dist. II 2015)

“¶3 Johnson was originally charged with misdemeanor theft because he cashed checks that were stolen from his mother and forged. Johnson's girlfriend, Rebecca Vis, later confessed that she stole the checks and forged them for Johnson to cash, duping him into believing his mother intended for him to cash the checks.”

“¶8 The jury heard Vis's letter to the district attorney confessing her involvement in the theft and forgery and denying that Johnson had any involvement or knowledge of the crimes. When called as a defense witness, Vis invoked her Fifth Amendment right to remain silent. A detective testified that Vis's handwriting was similar to the handwriting on the stolen and forged checks.”

Vis was the Defendant’s girlfriend.

COMMENTARY: Maybe much is omitted from the report, since it seems that on the face of it the man should not have been convicted. There is no indication the detective was qualified as an expert but yet gave expert testimony. An astute defense expert or astute attorney could have pointed out similarities in the detective’s handwriting or in anyone else’s handwriting, the prosecutor’s, the judge’s, etc.

1538. *Thunder-Hindsley v Hindsley, et al.*, Appeal No. 2014AP937 (Ct. App. Dist. 4 WI 2015)

In a question of whether decedent had signed either of two wills, no document examiner was called. The crux of the matter is given thus:

“¶2 After George W. Hindsley Jr., died on December 12, 2011, Berna petitioned the Jackson County Circuit Court for administration of George's estate and offered George's will dated July 26, 2005, for admission to probate. George's children from a prior marriage objected to the admission of the 2005 will on the grounds that George lacked the required capacity to execute the will. Following an evidentiary hearing, the circuit court invalidated the 2005 will (including an attached list disposing of tangible personal property) and a prior will executed on May 21, 1999, along with two codicils to the 1999 will. It appears that the

court invalidated George's wills on the basis that his signatures on at least some of the testamentary documents in question were forged. The court reasoned:

“It was the apparent signing of [George's] name by a third party to certain documents related to both wills that must lead the Court to conclude that I don't know what his true wishes were, and rather than guess, I believe it would be best that the matter proceed pursuant to intestate law.”

However, an attorney gave unimpeached testimony that she had explained the second 2005 will to George, who understood it all, and two other attorneys had signed as witnesses to George's signing of the 2005 will.

COMMENTARY: The absence of expert testimony regarding the signature weighed decidedly in the appellate order to probate the 2005 will:

“¶22 As for the other inconsistencies, the record does not contain any examples of George's verified handwriting, nor is there expert testimony by a document examiner or other writing expert regarding the authenticity of the signatures. As a result, it would not have been possible for the circuit court to determine whether any of the signatures on the testamentary documents were inconsistent with signatures the children agree were made by George. This problem is best demonstrated by the court's conclusion that it could not conclude that any of the signatures found on the testamentary documents were made by George or by a third party. Had the court been presented with a verified signature belonging to George, even if unassisted by expert testimony, the court at least would have had a basis for determining whether the signatures on the testamentary documents were made by George.”

It is penny wise and pound foolish to save money by not having expert assistance in a situation begging for expert assistance, as here regarding challenge to both testamentary capacity and validity of signatures. In my experience, especially if one knows one is peddling a forgery, one needs to shop ahead of time for a cooperative notary public who can create evidence one lacks but needs, or better yet one or two handwriting experts, or best of all a convenient and affordable number of attorneys. The heart of this case in my view, a view that could be mistaken, is that the Court of Appeals did not rule the will was valid nor that George had testamentary capacity. Rather, it ruled that there was no evidence to support the trial court's ruling and so went with the fallback presumption of validity.

2016

1539. *Estate of Stanley G. Miller v Storey*, Appeal No. 2014AP2420 (Ct. App. WI Dist 3 2016)

Part of Storey's appeal was based on her expert, Curt Baggett, having been limited in part of his testimony. He was not permitted to identify an individual as a writer of questioned checks where no one knew where he was and Baggett had no exemplars for him. The Estate, which prevailed, stipulated Baggett was qualified to give the portion of his testimony that was not stricken or limited.

COMMENTARY: One would think that by now even the most careless attorney lacking in the most basic devotion to due diligence would run this witness's name through a search in even the most inadequate case law service available. The man and his like do make a major economic contribution to the country in that otherwise useless academicians, alleged researchers and slightly less to severely more marginal handwriting experts can persuade the federal legislature to make billions of dollars available for creating cosmetically improved organizations over previous ones of substantively no better value, and thus prepare the way for more of the same duplication of previously useless advances in forensics. Think of all the empty but expensive roles for the same scientific saviors who succeeded previously in not solving any problem but securing the same old problems for the same old debates and ineffective meetings and such. A highly scientific duplication of Ogden Nash's poetic futility: "Bigger fleas have little fleas upon their back to bite 'em, and little fleas have lesser fleas, so on ad infinitum." How dare any flea break this eternal pursuit to unattained excellence and expertise or assert the genuine possibility of an intelligent and effective solution to the perpetual necessity of perpetually needing a solution that must be perpetually not forthcoming. Particularly ignore its ready availability since it would mean unglamorous hard work without unmerited remuneration.

3. Wisconsin Supreme Court.

1998

1540. *State v Gray*, 590 NW 2d 918, 590 N.W.2d 918 (WI 1998)

COMMENTARY: A document examiner testified that one person wrote printed portions of several forged prescriptions.

2016

1541. *Plymire v Romnek, et al.*, Appeal No. 2014AP2759 (Ct. App. WI 2016)

COMMENTARY: Testimony of document examiner, Meredith DeKalb Miller, received regarding falsity of a signature.

XX. WYOMING CASES.

1. Wyoming Trial Courts.

I have no case reports for Wyoming trial courts.

2. Wyoming Supreme Court.

In Wyoming there is no intervening court of appeal.

1542. *Hamburg v State*, 820 P2 523 (WY 1991)

Court summary: “(1) nomination petition [for candidacy in election] could be subject of forgery...; (4) evidence was sufficient to support conviction with respect to some signatures but not others...” Appellant of the New Alliance Party sought the seat vacated by Congressman Dick Cheney. Some signatures that he collected were suspicious, and, at page 525, upon investigation “it appeared that some of the signatures on the petition were obtained from the cemetery.” Footnote 2 then reads: “The state, in Count 1 of the information, explained this Chicago voting phenomenon differently: ‘[E]ach of them being then deceased.’ At oral argument in *Schutkowski v. Carey*, 725 P.3d 1057 (Wyo. 1986), counsel for appellee accounted for one of the original actors in unambiguous language: ‘He was deceased and remained deceased through the entire trial.’ Former Wyoming State Senator Win Hickey said she wanted to be buried in Chicago so that she could remain active in politics.”

Richard L. Crivello was the document examiner for the State. “He concluded that some of the signatures had been forged. He gave his opinion that appellant had probably written at least twenty-one of the names on the petition.” The Court then defines “forgery” and “writing.” Appellant’s contention that a petition cannot be the subject of a forgery is defeated because it is the “substance of the instrument, as distinguished from its form or name, [that] is determinative of whether it may support a charge of forgery.” At pages 525-526. Nor does fact no one was harmed help him: “Appellant cannot be absolved because his scheme was unmasked before his name was actually placed on the ballot.”

At pages 529-530 the discussion underlines the excellence of using the terminology for certitude in handwriting opinions first established by ABFDE and later adopted by other organizations, most notably ASTM Committee E-30. Having clearly explained his methodology, “The expert testified that the names of Sandra Dockins and Suzanne Pratt were *definitely* written by Mr. Hamburg. He testified that several other signatures on the petitions were ‘*very probably* prepared on the petitions by Mr. Hamburg.’” (Emphases added.) The Court then defines “probability” and equates it to levels of proof required at trial. Conviction for forging other than the names “definitely” written by Mr. Hamburg was overturned, the two “definitely” written by him equated to proof beyond a reasonable doubt.

COMMENTARY: Though pre-*Daubert*, this case is well worth citing when terminology for expressing certitude in handwriting opinions is challenged. This is the earliest reported court case that I have reviewed where the parallel to levels of proof at trial suggested in commentaries on other cases reviewed herein is directly confirmed. Hopefully, authors and organizations in document examination will incorporate the parallel in the official statement of the terminology, and also restate it as being truly a five-step range. As noted in comments on other cases, the careful use of the terminology of probability showed that Mr. Crivello was being very scientific and precise in his examination, evaluation and

reporting of the handwriting evidence.

1993

1543. *Warhawk v State*, 849 P.2d 1326 (WY 1993)

Warhawk appealed his conviction for forging two checks which was affirmed. Since the appeal hinged on a challenge to the qualifications of the prosecution's expert, I quote the final paragraphs from pages 1327-1328 in their entirety:

"Appellant argues that the trial court should have excluded Detective Burgen's opinion because the detective lacked sufficient qualifications to render an expert opinion. He claims in his brief that Detective Burgen's qualifications were inadequate because, among other things, the detective did not establish whether he had a college degree, whether he was certified in his field, or whether he satisfied the minimum training requirements for being a police officer. Appellant did not object at trial to the detective's expertise on any of these grounds, nor did he request to voir dire the detective. Since Appellant did not object at trial to Detective Burgen's testimony, we must decide whether the trial court committed plain error by allowing the testimony. W.R.Cr.P. 52(b); W.R.E. 103(d). To invoke the doctrine of plain error, Appellant must demonstrate the presence of the following three elements:

'First, the record must be clear as to the incident which is alleged as error. Second, the party claiming that the error amounted to plain error must demonstrate that a clear and unequivocal rule of law was violated. Finally, that party must prove that a substantial right has been denied him and as a result he has been materially prejudiced.'

'*Ramos v. State*, 806 P.2d 822, 827 (Wyo. 1991) (quoting *Bradley v. State*, 635 P.2d [1161,] 1164 [Wyo. 1981]).'

'*Rands v. State*, 818 P.2d 44, 48 (Wyo. 1991).'

"Appellant's argument fails to satisfy the second prong of the plain error test because Detective Burgen's testimony did not violate a clear and unequivocal rule. Pursuant to W.R.E. 702, a witness may be qualified as an expert by 'knowledge, skill, experience, training, or education.' The assistant district attorney in this case laid a sufficient evidentiary foundation to establish Detective Burgen as being an expert. Detective Burgen was a police officer for fourteen years and a detective for four years. He started investigating forgery cases for the Casper Police Department in 1989 and, at the time of trial, had investigated '[w]ell over two hundred' cases. In 1990, he received seventy hours of training in questioned documents from the United States Secret Service. The detective received additional training in forensic document examination under Andrew Bradley (although the record does not disclose the length of this training or Mr. Bradley's position). Further support for Detective Burgen's expertise is found in the fact that he previously testified in court over fifty times regarding handwriting analyses. The foregoing qualifications displayed that Detective Burgen had adequate knowledge and

experience in the field of handwriting analysis for the trial court to accept him as expert witness. See Chavez v. State, 604 P.2d 1341 (Wyo. 1979), cert. denied, 446 U.S. 984, 100 S.Ct. 2967, 64 L.Ed.2d 841 (1980) (officer with qualifications similar to Detective Burgen's considered as being an expert). Consequently, the trial court did not commit plain error.”

COMMENTARY: This and other cases sufficiently reply to those who falsely claim that the Andrew Bradley Course had no merit for providing acceptable qualification to an aspiring expert witness. Secondly, it underlines the advisability to make all one's objections on the record during trial and not wait till it is too late to have the full benefit of them upon appeal. As in this case, if the objection is allowed on appeal, it seems always to require a more difficult level of proof why the alleged error by the trial court is an error meriting reversal.

Of note also is that the Supreme Court of Wyoming does not even bother addressing the claim that there was no testimony as to whether degrees or certifications were had or not.

2000

1544. *Helm v State*, 2000 WY 56, 1 P3 635, 2000 Wyo. LEXIS 63 (WY 2000)

It was not misconduct for prosecutor to argue in rebuttal that defendant did not call a handwriting expert while State did, and the expert gave concrete reasons for his opinions. Nor was it impermissible argument when prosecutor “told a fictional story about a well-dressed gentleman pickpocket, to whom he compared Helm...” At page 640. Then the Wyoming Supreme Court displays its sense of humor as it did in *Hamburg v State*: “The prosecutor’s characterization, in closing argument, of Helm as a gentleman pickpocket is almost flattering compared to the closing argument we reviewed in *Tennant*. There, we declined to find plain error in a closing argument wherein the prosecutor referred to the defendant as ‘a leech, a blood sucker, and a predator on society’ and suggested he ‘might go out and find crippled children to pick on next.’ 786 P.2d at 346.”

At page 641 the comment in rebuttal argument that defendant did not call a handwriting expert is discussed: “Viewed in context, however, the statement was a comment on the absence of evidentiary support for the defense’s theory that the victim actually signed all the questioned checks himself.” The Government may call attention to lack of evidence on a point, which is not to comment on failure of a defendant to testify.

COMMENTARY: The entire context of the decision intimates that the Court thought that expert handwriting evidence is reliable. However that may be, this case plainly supports the admissibility of the expertise as clearly reliable and helpful to the fact finder in determining a fact in issue.

1545. *McGarvey v State*, 2002 WY 149, 55 P.3d 703, 2002 Wyo. LEXIS 164 (WY 2002)

Footnote 1 reads in its entirety: “The handwriting expert testified to six levels of confidence that can be given when asserting an opinion as to whether a person wrote or signed a particular document. The third level is ‘indications,’ meaning that the writings or signatures are similar in structure. The fourth level is ‘probable,’ meaning that it is more than likely that a particular person wrote or signed a particular document; the fifth level is ‘highly probable,’ meaning that a particular person is the author of a particular document or signature, but there exists a remote possibility that someone else could have written or signed the document; and the sixth level is ‘conclusive,’ meaning no other person could have written or signed a particular document.”

At [*7]: “While the State’s handwriting expert could not conclusively determine that McGarvey had signed the forged checks, he could not exclude her either. The signature on all the forged checks showed ‘indications’ that McGarvey had signed them. This, in itself, would not suffice to convict McGarvey, but is probative and corroborative evidence that McGarvey executed the checks. We conclude that the evidence, when viewed in a light most favorable to the State, was sufficient for reasonable individuals to conclude that McGarvey was the person who fraudulently wrote or used the preprinted checks belonging to Bucknell.”

COMMENTARY: I reproduce Footnote 1 in its entirety to illustrate how courts of law nearly uniformly view the standard terminology in document examination for expressing assurance in expert opinions. The second quote shows how the courts may then reason in evaluating the evidential value of the terminology. I submit that the proper evaluation is that technically it cannot be proven the defendant forged the checks and is not in the least probative nor even corroborative, merely supporting a reasonable suspicion such as to support an issue of a search warrant or a request for exemplars.

1546. *Williams v State*, 2002 WY 184, WY LEXIS 222, 60 P3 151 (WY 2002)

A *Daubert* hearing was granted on proposed handwriting expert, Mr. Crivello, who “stated that he had never failed proficiency testing of his work in the area over the past 16½ years and spoke about the substantial history of the field of document examination and his familiarity with numerous recognized books in this field. He also addressed various technical changes in the field, peer review publications, and articles which support that trained experts can discern pertinent information from their analysis of documents which lay persons cannot.”

Ruling that the expert’s testimony was admissible, the Trial Court said: “Again, the Court agrees that the area of handwriting analysis has been utilized in Wyoming and has been relied upon by trial courts.... Again, the Court sees no reason to exclude the testimony of Mr. Crivello under traditional expert witness standards nor under the *Daubert*-type analysis.” The Supreme Court stated: “Accordingly, we hold that the district

court properly considered each of the four enumerated factors first set forth in *Daubert* and thereafter explicitly adopted by this court in *Bunting*. Likewise, the court appropriately found that the proffered handwriting expert was sufficiently qualified through adequate experience and specialized expertise in the area as expressed in *Bunting*.” Appellant argued Crivello was not certified and that handwriting analysis suffered various flaws.

The decision quotes 15 Am. Jur. Proof of Facts 3d, *Handwriting Identification*, § 27 (1992): “The ability to detect forgeries and identify handwriting is gained primarily through self-study and experience.” The book, Jay Newton Baker, *Law of Disputed and Forged Documents*, Charlottesville, VA, Michie Co., 1955, is also quoted. An explicit ruling is made: “Finally, we take this opportunity to clarify that this court does not adopt that rule of law expressed in the opinion *United States v. Starzecpyzel*..., holding that forensic document examination cannot be regarded as scientific knowledge within the meaning of the rule regarding admissibility of expert testimony and that as such, a *Daubert*-style review did not prove necessary in such an instance.”

Crivello expressed no opinion as to whether defendant had written anything on the checks in question, only that the victim had “probably” or “very probably” not written any of it. Also, his evidence was not the sole evidence of guilt, so it need not have been beyond a reasonable doubt.

COMMENTARY: This is an excellently reasoned opinion by the Wyoming Supreme Court and is recommended to your study. Crivello showed mastery of the writings in the field and a facility to explain all aspects of his expertise with clarity. No factor supporting his admissibility seemed to have been left out. Knowing which texts and articles in our field that courts have quoted with approval will provide a firm basis to show that one’s own reliance on them is reasonable.

2005

1547. *Davis v State*, 2005 WY 93, 117 P.3d 454, 2005 Wyo. LEXIS 113 (WY 2005)

“The appellant claims that the district court abused its discretion in admitting the expert trial testimony of Chris Reed (Reed), a self-described ‘document examiner...’” Reed was properly qualified and testified that defendant made out credit card slips he was accused of forging. This testimony did not prejudice him for several reasons, one being he had admitted to writing them.

COMMENTARY: The challenge to Reed’s qualifications and testimony were properly overruled. If Davis’s appeal attorneys had had a sense of fairness, they would have argued that, just as Reed’s testimony had unjustly prejudiced Davis, so also did the fact finder’s acceptance of Davis’s admission to having written the credit card checks.

2008

1548. *Cooper v State*, 2008 WY 5, 174 P.3d 726, 2008 Wyo. LEXIS 6 (WY 2008)

The trial judge held an *in limine* hearing in which he held Officer Chris Reed was qualified as a handwriting expert and offered reliable testimony. Cooper's own expert testified to two opinions, first, Reed was not qualified, and, second, her methodology was proper. Wyoming Supreme Court had adopted the reasoning in *Daubert* in *Bunting v Jamieson*, 984 P.2d 467 (Wyo. 1999), but had not abandoned its own precedents.

COMMENTARY: Reed had taken the two-week Secret Service Course, had more than five years experience in which she had examined 100-150 documents. I suspect these numbers were for cases, not documents, since a single case might have 100 documents. However, she had systematically and satisfactorily testified to all *Daubert* and *Bunting* criteria for admissibility of expert testimony. Hardly a document examiner would not concede she had modest qualifications if one only looked at paper, but in practice she left a record that is highly commendable as an example how to meet the challenges of an *in limine* hearing on reliability and admissibility.

I recommend this case report to all handwriting experts, especially those practicing in Wyoming. Neither name nor background information is given for Cooper's expert, which might be kindly to this expert who in essence said Reed used correct methodology but was not qualified to be correct. Might the expert have said, if asked, she was only qualified to be incorrect? It brings to mind what a colleague of mine told me. An opposing expert said she gave a correct opinion but was not qualified to do so. Most of us would say giving a correct opinion is the hallmark and acid test of competence. Most important, since the law is that no witness can be an expert in the qualifications or credibility of another witness, forensic associations should consider it unethical to give such testimony. Surely, attorneys ought to object vigorously when an ill-advised and impertinent opposing "expert" presumes to tell judge and jury what their legally reserved findings should be.

The End